REPORT OF

THE HONOURABLE
E.N. HUGHES, Q.C.

ON THE
SALE OF FANTASY GARDEN WORLD INC.

VICTORIA, BRITISH COLUMBIA

91-03902/

REPORT OF THE HONOURABLE E.N. HUGHES, Q.C.

SALE OF FANTASY GARDENS

I N D E X

		Page
1.	INTRODUCTION	1
2.	THE CONFLICT OF INTEREST GUIDELINES	6
3.	THE FACTS AS FOUND STATED CHRONOLOGICALLY	9
4.	THE PURPOSE OF THE $20,000.00 AND THE PETRO CANADA ISSUE	28
5.	CONCLUSION	52
6.	APPENDICES	62

April 2, 1991

REPORT OF THE HONOURABLE E.N. HUGHES, Q.C.

ON THE SALE OF FANTASY GARDEN WORLD INC.

I N T R O D U C T I O N

On February 14, 1991, I was asked by the Premier to conduct a review for the purpose of determining whether he was in a conflict of interest situation "past, present or future" with respect to his role, if any, in the sale of Fantasy Gardens. On February 19, 1991, I announced my terms of reference to be:

1. What role, if any, did Premier Vander Zalm play in the 1990 sale of Fantasy Gardens?

2. If Premier Vander Zalm did play a role in that sale, was he in breach of Conflict of Interest Guidelines put in place by the Premier for adherence by Members of the Executive Council?

I append to this Report as Appendix 1.1, a transcript of my comments to the media on February 15, 1991, as well as a copy of the release issued by my office on February 19, 1991, at the time of finalizing the terms of reference which is Appendix 1.2.

The Conflict of Interest Guidelines For Ministers and Parliamentary Secretaries which I am to apply in reaching my decision are included in Appendix 1.3. Those Guidelines will be discussed in detail later in this Report.

In my statement of February 19, 1991, I referred to the agreement between the Offices of the Premier and the Leader of the Opposition as to the manner in which I was to carry out this assignment. I referred on that day to what the procedure would be

and I will say more in a moment as to how I carried out this assignment in accordance with my undertaking. Counsel for the Premier and Mrs. Vander Zalm had not been retained by February 19, 1991. Once in the picture, we had discussions about procedure and we exchanged correspondence on March 7 and 8, 1991 (included as Appendix 1.4 and 1.5). In my letter of March 8, I reviewed for counsel the fact that his clients had expressly not wanted a public inquiry under the Inquiry Act, but I offered, even at that date, should his clients have had a change of mind, to step aside in favour of a public inquiry under the Inquiry Act. That was not desired and we worked out future procedures that I will comment upon. I point these factors out so that it will be abundantly clear that the manner by which this matter proceeded was throughout in accordance with the wishes of the Premier.

Notwithstanding the apparent consensus on the procedure to be followed, I recognized from the beginning of my assignment and through to its last days that this process was not ideal. I was concerned with the fact that the public would not be involved and able to scrutinize the proceedings as they unfolded. I was also concerned that this process did not afford all those interested in its outcome the full procedural protections or rendered obligations that would apply were this a trial or public inquiry. Nevertheless, given that the procedure followed was at the joint request of the offices of the Premier and the Leader of the Opposition I considered that it would have been arrogant for me to require anything else.

On the very positive side, the private and relatively informal procedure that I followed did have the virtue of permitting me to proceed much more quickly than would have been the case if a more formal and public procedure had been employed. Furthermore, the procedure I adopted allowed me to conduct my review in a relatively

calm and dispassionate environment. My commitment has always been to make a full and public report and this has been accepted without reservation by the Premier and the Leader of the Opposition.

I made a commitment to report quickly and, if possible, by the end of March. I appreciated that my report could not be delayed much beyond that time period. More time to interview and re-interview witnesses, to reflect upon the testimony and to write my report would have been of considerable assistance but that was not a luxury available to me.

I commenced work on February 19, 1991. Between that date and March 21, 1991, my time was about equally divided between this assignment and meeting my statutory responsibilities as Acting Commissioner of Conflict of Interest under the Members' Conflict of Interest Act. I have utilized the last 10 days of March exclusively on this matter. I have throughout been assisted by Joseph J. Arvay, Q.C. and John L. Finlay of the Victoria/Vancouver law firm of Arvay, Finlay who, over the last six weeks, made available an enormous amount of their time and also provided valuable legal advice. Nineteen persons were interviewed under oath and their testimony recorded. A short interview with a twentieth person was conducted on the telephone, therefore unsworn, but was transcribed.

The list of persons formally interviewed is contained in Appendix 2 to this report. Most persons interviewed are referred to in the narrative of this report and that will give a general indication of the nature of the testimony each was able to give to me.

The first two persons, separately interviewed, were Premier and Mrs. Vander Zalm. As the other eighteen interviews were

conducted, the transcripts of what they said were made available to their counsel, in a timely way. After all eighteen interviews had been completed, the Premier and Mrs. Vander Zalm were again examined and given the opportunity to respond on all matters. Their counsel was present with them throughout their appearances. At the conclusion of the final interviews with Premier and Mrs. Vander Zalm, their counsel had the opportunity to question them on remaining matters they considered to be relevant. In questioning the various witnesses, including the Premier, I and my counsel endeavoured to be thorough and searching in our examination without being unduly adversarial. My role was to be neither prosecutor or defence counsel. I was, however, required to assume the dual and difficult task of investigator and decision maker. The process might therefore be described as more inquisitorial than adversarial. My only objective was to search for the truth, affording each and every person all the fairness and procedural protections possible in the circumstances. I refused to accept any information on an "off the record basis". Everything of substance that I was told was on the clear understanding that it would be made public. While there are places in the transcript of the proceedings where an "off the record discussion" is noted those invariably involved procedural matters.

Mr. Tan Yu, whose company purchased Fantasy Gardens, declined to be interviewed either in Taipei, where I offered to travel, or elsewhere. Others we wished to interview were cooperative, although one person was hesitant about appearing for an interview, but before it was necessary to press the matter, a decision was made that an interview would not be required. Preliminary information was gathered from others with whom a formal transcribed interview was not required.

A great volume of documentation was made available to me. Attached as Appendix 3 is a list of documents that were marked as exhibits during the course of the examinations. All documents received that were considered relevant to my assignment were marked as exhibits in the course of one or more of the interviews.

Following the final interviews, I prepared tentative findings of fact. By agreement, they were communicated to counsel for the Premier and Mrs. Vander Zalm. The majority were transmitted on Wednesday evening, March 27, 1991, with the remainder being transmitted late the following afternoon. On Saturday afternoon, March 30, 1991, my counsel and I met with counsel for Premier and Mrs. Vander Zalm and received a lengthy written submission on behalf of their clients which, for 3 1/2 hours, was carefully reviewed for me in oral presentation by counsel. I very much appreciate the assistance that has been given to me and I likewise wish to thank all others who have so fully cooperated to assist within the tight time frame within which this assignment has been carried out.

THE CONFLICT OF INTEREST GUIDELINES

The idea that public officials ought not to place themselves in a position where they have a conflict of interest is not new, but can be traced as far back to the writings of Plato. However, they certainly do reflect a growing awareness of the very high standard of ethics and integrity expected of public officials in modern day government. Every jurisdiction in Canada has similar statutes or guidelines, all reflecting this common theme. Prime Minister Trudeau once said that "the precept of fulfilling one's official responsibilities in an objective and disinterested manner lies at the very heart of our system of government".

In the Commission of Inquiry into the Facts Concerning the Allegations of Conflict of Interest concerning The Honourable Sinclair M. Stevens, Commissioner, the Honourable W. D. Parker said that the purpose of the federal conflict of interest rules is "to ensure that a public office holder exercises his or her official duties and responsibilities in a manner that will bear the closest public scrutiny so that public confidence and trust in the integrity, objectivity and impartiality of government are conserved and enhanced." Furthermore, he recognized the important distinction between on the one hand, the Criminal Code which proscribes fraudulent, corrupt and criminal behaviour, with, on the other hand, conflict of interest rules. I accept that important distinction. No legal consequences flow from any violation of the Premier's Guidelines. The consequences, if any, are entirely of a political nature. Furthermore, the Criminal Code and the conflict Guideline are of an entirely different character and serve very different purposes. The Guidelines must, accordingly, be construed and applied to meet their overall objective which is "to enhance public confidence in the integrity of government."

I am mindful, in dealing with the Conflict of Interest Guidelines, that the Premier emphasized when announcing them that they were put in place to ". . . leave no doubt in the public's

mind as to the ethics and integrity of those who serve as Ministers". The responsibilities of the Premier to the public can of course be no less. Some might say it should be more, but the standard expressed in those words of the Premier is necessarily a high one and it is one quite adequate, in my opinion, on which to judge the Premier.

With reference to the first of the two questions before me for decision, it will quickly become apparent to the reader of this report that the Premier played the lead role on the vendor side in the 1990 Fantasy Garden sale. When I come to the second question and make my analysis leading to my decision of whether, in that lead role, the Premier was in breach of the Guidelines, my microscope will necessarily focus on, to use his words, "ethics and integrity". To relate that directly to Guideline 1 for example, the question will be, in the role he played, did he or his family members' financial interests affect or appear to affect his ability to objectively perform his duties as first Minister of the province in accordance with high ethical standards and with the utmost of integrity?

To judge the Premier on the basis I have indicated is to be consistent with what I have expressed in previous reports prepared for the current government. For instance, in reporting to the then Attorney General at about the time of enactment of the Guidelines in January 1987 with respect to suggestions of conflict of interest on the part of a then cabinet colleague I said;

> . . . it is my . . . judgment that in future instances the appearance of conflict, as well as conflict in fact, is to be avoided if today's high level of public confidence in the honour and integrity of those who offer themselves for the very high and prestigious position of elected public office is to be maintained.

The Premier's reference to "ethics and integrity" and mine to "honour and integrity" with respect to the expected standard of behaviour of Members of Cabinet are synonymous. The Premier is to be judged by me on a basis with which he and I are in accord.

THE FACTS AS FOUND STATED CHRONOLOGY

The Fantasy Garden property is located in Richmond, British Columbia, at the corner of Highway #5 and Steveston Road. The Vander Zalms purchased this property in 1984 through their company, Fantasy Garden World Inc. At the time of the purchase of the property and from the inception of the company Premier Vander Zalm was an officer and a director of the company. In 1984 Mr. Vander Zalm was not involved in politics and until his re-entry into politics he played an active role in the business and management of Fantasy Garden World.

The shareholdings in Fantasy Garden World was and is very straight forward. The Company had 3 issued common shares until April 1989. The Premier held 2 1/2 common shares and Mrs. Vander Zalm held the other half share until April 1989. As such, the Premier's equity interest in Fantasy Garden World Inc. was 83 1/3% and Mrs. Vander Zalm held the balance.

In the summer of 1986, Mr. Vander Zalm re-entered politics and became leader of the Social Credit party and Premier of this Province. On August 5, 1986, the Premier resigned as an officer and director of Fantasy Garden World Inc. The Premier had consulted and had taken advice from his lawyer, Michael Kendler, and his chartered accountant, John Vegt, with respect to the requirements for disclosure of assets and ways in which he could avoid conflict of interest when he re-entered politics. What was being considered at that time was whether he should not merely resign as an officer and director of Fantasy Garden World Inc., which was done without hesitation, but also whether he should transfer his shares to his wife. The advice the Premier received was clear and unequivocal. Mr. Kendler, counsel to the Premier, advised that the disclosure requirements and the potential for conflict of interest were such that nothing would be accomplished by transferring shares to his spouse as the requirements and duties extended to property and interests of the Premier's spouse.

Therefore, a transfer of his shares would not shield him from the disclosure requirements nor relieve him of any conflict of interest duties. For his part, Mr. Vegt advised the Premier with respect to the adverse income tax implications should the Premier transfer his shares to Mrs. Vander Zalm at less than fair market value. In the result, it was determined that there would be nothing to be gained by the Premier transferring his shares of Fantasy Garden World Inc. to Mrs. Vander Zalm and as such, the matter went no further.

The share structure of Fantasy Garden World remained the same until April 1989 when, for tax reasons, Fantasy Garden World Inc. was re-organized and new shares were issued by the Company to both the Premier and Mrs. Vander Zalm. The reorganization did not affect the beneficial ownership of Fantasy Garden World Inc. The Premier continued to own 83% of the issued shares of the Company and Mrs. Vander Zalm owned the balance.

The evidence was uncontradicted, that when the Premier re-entered politics in 1986 and resigned as an officer and director of Fantasy Garden World Inc., that Mrs. Vander Zalm took over the day to day management of the business. This is to be contrasted with the situation when the Vander Zalms were considering selling the Fantasy Garden property and business. The evidence is uncontradicted that the Premier played the lead role in considering offers and negotiating the sale of Fantasy Gardens.

The Vander Zalms had considered selling Fantasy Gardens as early as 1986 when Mr. Vander Zalm re-entered politics. From time to time, oral inquiries as to the property would be received, but it was not until the latter part of 1989 and 1990 that serious discussions took place with respect to the sale of the property. The business of Fantasy Gardens did quite well in 1986, but

thereafter consistently lost money. Mr. Vegt, the Vander Zalms' accountant, recommended that the business be sold and expressed concern over the level of bank indebtedness. Part of the difficulty that the business was experiencing was that Mr. Vander Zalm, a businessman of some acumen, was no longer involved in the day to day operation of the business.

On the south-west corner of the Fantasy Garden land there is a relatively small piece of property which has loomed large in the controversy surrounding the sale of Fantasy Gardens. This is the vacant former gas station site owned by Petro Canada Inc. This property was offered for sale for the first time in the fall of 1986, as Petro Canada had designated this property as surplus and wished to dispose of it. The method of sale employed by Petro Canada for this site, up until 1990, was a selective tender process whereby Petro Canada would send out information regarding the property and soliciting bids from persons who might be interested in purchasing the property or who had expressed an interest in purchasing the property in the past. As a result of this selective tender process, in the fall of 1986, Petro Canada did not receive any acceptable offers. Shortly after this tender process, Petro Canada learned that the soil on the property was contaminated and therefore spent a considerable period of time cleaning up and de-contaminating the property.

During 1987 through 1989, it became apparent that there were at least 2 potential purchasers who were very interested in purchasing the Petro Canada property. One was McDonald's Restaurants of Canada Ltd. and the other was Fantasy Garden World Inc., through Mrs. Vander Zalm. For some period of time, McDonald's Restaurants, and specifically personnel in their real estate department, had been in touch with their counterparts at

Petro Canada to express interest and enthusiasm at the possibility of acquiring the Petro Canada property.

On May 24, 1989, Petro Canada distributed, to those persons and entities on their selective tender list, information with respect to the Petro Canada lot in question. As a result of receiving this information, Bill Mason, an employee in the real estate department of McDonald's Restaurants, immediately contacted Petro Canada to express interest and to find out what price Petro Canada wanted for the property. Mr. Mason, it is reported to me by employees of McDonald's, was told that in fact the property was not for sale for "political reasons". On November 17, 1989, a list of properties owned by Petro Canada in British Columbia was sent out to prospective purchasers and on this list was the Petro Canada property adjacent to Fantasy Gardens. As this information seemed contrary to the information given to Mr. Mason in his telephone conversation with an employee of Petro Canada shortly after May 24, 1989, Mr. Bruce Andrews, another employee of McDonald's Restaurants, wrote to Petro Canada on January 2, 1990, for information to clarify the situation. Mr. Andrews reports that he or Bill Mason had another telephone conversation with someone from Petro Canada, who indicated that the property was removed from the market as it was a "political situation". These conversations satisfied the employees of McDonald's that the property was going to be sold to the owners of Fantasy Gardens. I have been unable to have either of these conversations confirmed or denied by anyone from Petro Canada Inc. and therefore I have not relied on these statements in making any findings.

Mr. Thomas Simms, Executive Vice-President of Petro Canada, testified that as a result of these selective tender bids, in May of 1989, only 2 offers were received, neither of which was from McDonald's or Fantasy Garden World, and neither of which was

acceptable to Petro Canada. Shortly thereafter, Petro Canada began negotiating with the principals of Fantasy Gardens, with respect to the sale of the Petro Canada lot to Fantasy Garden World, as Petro Canada believed that Fantasy Garden World would be a purchaser that would be motivated to pay a higher price for this lot because of the location of the Petro Canada site in relation to Fantasy Gardens.

In early 1990, both Mr. and Mrs. Vander Zalm told their accountant, Mr. Vegt, that they had a "verbal option" on the Petro Canada property and that it could be purchased by them at a price of slightly more than $1,000,000.00.

During March, 1990, the Premier met with Mr. Kendler to discuss a letter of intent for the purchase of Fantasy Gardens, dated March 30, 1990, submitted by a company called Bayonet Point Holdings Ltd. The principal of that company, Michael Horsey, submitted the offer which contained in clause 5 a requirement that Fantasy Garden World use its best efforts to acquire the Petro Canada lot at a price not to exceed $1,050,000.00. The significance of this particular figure is highlighted by the following factors:

a) Mr. Horsey was told by the Premier or Mrs. Vander Zalm that this was the price required by Petro Canada;
b) An earlier draft of the Bayonet Point offer submitted to Mr. Kendler had a price of $1,000,000.00 attached to the Petro Canada land. This was changed by Mr. Kendler on the instructions of his client to a figure of $1,050,000.00;

c) This is the price at which the Petro Canada property was ultimately sold to Asiaworld (Canada) Inc. on September 14, 1990, and was the amount of a previous Fantasy Garden World offer of September 5, 1990.

I do not believe it is merely coincidence that the figure of $1,050,000.00 keeps appearing with respect to the Petro Canada lot. I conclude that Mr. and Mrs. Vander Zalm had spoken to officials at Petro Canada as early as March 1990, and had become aware that a price of $1,050,000.00 would be acceptable. In this way, it can be seen how it is that the Vander Zalms were in a position to tell Mr. Vegt that they had a "verbal option".

The significance of this will be discussed in greater detail below, but I wish to point out that after August, 1989, Petro Canada did not utilize the selective tender process as they had done previously with respect to this property, although this process was not mandatory. Further, after January 1990, McDonald's no longer expended any effort to try and purchase this property.

On March 31, 1990, Faye Leung first approached the Premier and Mrs. Vander Zalm with respect to the sale of Fantasy Garden World Inc. to purchasers in Taiwan who might also be interested in making other investments in British Columbia. Mrs. Leung was known to the Vander Zalms as a realtor and while they had exchanged Christmas cards, this was the first date upon which they started to have regular contact.

On April 5, 1990, the Premier wrote to the Minister of International Trade, The Honourable Elwood Veitch, requesting that Mr. Veitch contact Faye and Dean Leung, as they had many contacts for joint ventures and new developments in both business and housing.

The Premier was presented with an interim agreement for the sale of the Fantasy Garden property dated June 2, 1990, by Mrs. Leung. The named purchaser in that agreement was IAA Investments and Development Inc. and or Nominee. As the Premier had to attend the First Ministers Conference on the Meech Lake Accord in early June, 1990, he did not seriously consider this offer until his return.

On June 16, 1990, the Premier accepted the offer by IAA Investments and Development Inc. which had the following terms:

a) The purchase price was to be U.S. $14.5 million;
b) It was to be an all cash transaction or cash to the existing Canadian Imperial Bank of Commerce first mortgage, which at that time stood at approximately $4.5 million;
c) The transaction was to close on or before July 31, 1990;
d) While the price was stated to be U.S. $14.5 million, the amount to actually be received by the vendor was U.S. $12.5 million.

The Premier not only signed his acceptance to this agreement, but was the most active participant in the negotiations from the Fantasy Garden side.

In late June 1990, Mr. Robert Currell, a Vancouver realtor, wrote to the President of Petro Canada inquiring as to the status of the corner lot adjacent to Fantasy Gardens, as he had a number of clients that might be interested in purchasing the property. On July 13, 1990, Mr. Simms wrote to Mr. Currell and informed him that the Petro Canada site would be sold through the tender process. In fact, such tender process was never utilized.

In early July, the Vander Zalms received a number of faxed letters from Mrs. Leung, who at that time was in the far east. Mrs. Leung indicated that:

1. The purchasers of Fantasy Gardens wanted the completion date to be extended to August 20, 1990;
2. The $5,000.00 deposit called for in the June 2, 1990, agreement, was to be increased to an amount to be agreed to by the Vander Zalms (which was subsequently U.S. $100,000.00);
3. The purchaser wanted the terms changed to:
   a) $3 million cash on closing;
   b) The CIBC mortgage of $4.5 million be assumed by the purchaser;
   c) The vendor (the Vander Zalms) were to provide U.S. $7 million in mortgage financing for the purchaser at interest at 10% per annum for a 10 year term.

It is not clear that all of these new terms were ever agreed to by the Vander Zalms, but, in any event, these terms were not those finally agreed to by the parties.

It was also in early July 1990 that Faye Leung informed the Premier and Mrs. Vander Zalm that she was acting on behalf of Tan Yu. She informed the Premier that in addition to purchasing Fantasy Gardens, Tan Yu was also considering investing in British Columbia, and specifically in setting up a trust company in this province.

Mrs. Leung requested, on a number of occasions in July 1990, that the Premier send a congratulatory certificate to Elton See Tan, the son of Tan Yu who was being married in the Philippines on July 27, 1990. In fact, the Premier sent such a congratulatory certificate bearing the coat of arms of this province, as well as

a letter dated July 27, 1990, which was faxed to Tan Yu's son. The congratulatory certificate sent by the Premier was presented by Faye Leung to Tan Yu's son at his wedding.

Mrs. Leung also requested information on the setting up of trust companies in British Columbia as well as further information on the Petro Canada site. The Premier and Mrs. Vander Zalm were informed that Tan Yu and his group would be attending in British Columbia to view the Fantasy Garden property and confirm the terms of sale during the period of August 1 - 4, 1990.

The Premier, as a result of these requests made by Mrs. Leung for information on the establishment of a trust company in British Columbia, wrote to the Minister of Finance, the Honourable Mel Couvelier, on July 18, 1990, requesting information in this regard to be supplied to the Premier so that the Premier might provide the information to Mrs. Leung's delegation.

On July 30, 1990, the Premier and Mrs. Vander Zalm received a lengthy fax from Mrs. Leung, who at that time was in Taipei. The fax dealt with any number of subjects, including the date of arrival of the Tan Yu group and what Mrs. Leung expected the Premier and Mrs. Vander Zalm to do for the members of the Tan Yu group. In addition, Mrs. Leung requested that information on the Petro Canada site and other lands adjacent to Fantasy Gardens be gathered, as Tan Yu was interested in purchasing more than just the Fantasy Garden property itself. Mrs. Leung conveyed to the Premier that the Premier be prepared to show Tan Yu the "red carpet", "VIP" treatment he was used to receiving in the Far East.

On July 31, 1990, the Minister of Finance provided the Premier with briefing materials to be forwarded to Mrs. Leung, respecting the establishment of a trust company in British Columbia. Mr.

Couvelier was not informed that Mrs. Leung was representing a group that was interested in purchasing Fantasy Gardens.

In the early evening of August 1, 1990, the Premier and Mrs. Vander Zalm met with Tan Yu and Mr. and Mrs. Leung in Tan Yu's suite at the Bayshore Hotel in Vancouver. They reviewed the terms of the proposed sale of Fantasy Garden World. Later on that evening a dinner was held at Trader Vic's Restaurant in the Bayshore Hotel, during which the Premier discussed with Tan Yu the establishment of a trust company in British Columbia. At some time during the evening of August 1, 1990, I find that the Premier provided to Tan Yu the briefing material which had been forwarded to the Premier by the Minister of Finance.

During the day of August 2, 1990, the Tan Yu group attended at Fantasy Gardens and toured the property in company with the Premier. That evening Tan Yu, Mrs. Leung and a lawyer retained by Tan Yu, Roger Bourbonais had dinner at the Bayshore Hotel and discussed the requirements for the incorporation and establishment of a trust company in British Columbia.

On the evening of August 3, 1990, the Premier and Mrs. Vander Zalm had a commitment in the early evening, after which they were to attend and have dinner with Tan Yu, his group, and Mr. and Mrs. Leung. When the Vander Zalms arrived at the Bayshore Hotel on the evening of August 3, 1990, Mrs. Leung reported to them that Tan Yu wished to change the terms of sale. Specifically, Tan Yu was insisting that the Vander Zalms provide U.S. $7 million in vendor financing, interest free, for a period of 5 years. Understandably, this caused the Vander Zalms some consternation. During the period from 7:00 p.m. to approximately midnight, Mr. Vander Zalm and Mrs. Leung worked on various alternatives to be negotiated with Tan Yu.

Tan Yu was staying in a corner suite at the Bayshore Hotel and after he returned from dinner on the evening of August 3, 1990, he went to his suite. Mr. and Mrs. Vander Zalm were in the room rented by Mr. and Mrs. Leung where Mr. Vander Zalm and Mrs. Leung were working on the terms of sale. As the Premier has described, the deal went from the best position as far as he was concerned, namely an all cash transaction, to a middle position, whereby vendor financing would be provided with interest payable, to the worst position, namely that vendor financing would be provided without any interest being payable by the purchaser for the first five years of the ten year term.

Eventually, the terms of sale were agreed on and they are as follows:

a) $3 million cash would be payable on closing;
b) closing would be extended to September 7, 1990;
c) Fantasy Garden World Inc. was to provide vendor financing in the amount of U.S. $11.5 million, U.S. $4.5 million of that amount was to bear interest immediately and the remaining U.S. $7 million was to be interest free for a period of 5 years but thereafter would bear interest for the remainder of the 10 year term.

As a result of this negotiation, the Vander Zalms lost a substantial amount of interest ($2 million to $3 million). The Premier also negotiated with Mrs. Leung a reduction of the commission to be paid to IAA Investments and Development Inc. That entity was to receive an amount of U.S. $2 million from this transaction. The Premier negotiated with Mrs. Leung, and the amount became U.S. $1 million, payable over time in proportion to the amount of payments received by the Vander Zalms from the purchaser. This would mean at closing that IAA would be entitled to a payment of U.S. $150,000.00 but over time would be entitled

to further payments which would total U.S. $1 million. This was confirmed in an agreement in writing entered into by the Premier and Mrs. Leung on August 3, 1990.

As well, the Premier wrote out what appears to be the terms of a proposed agreement between himself and Mrs. Leung regarding any commission that might be payable to the Vander Zalms as a result of Asiaworld (Canada) Inc. acquiring properties that were adjacent to the Fantasy Garden World property. This will be detailed below and I note here that the Premier did not sign that document and denies that it reflects any agreement on his part. For purposes of this narrative, the document reflects that Mrs. Leung would be entitled to 50% of any amount received by the Vander Zalms as commission on the sale of properties adjacent to Fantasy Gardens to Asiaworld (Canada) Inc.

Finally, on the early morning hours of August 4, 1990, in Tan Yu's suite at the Bayshore Hotel at approximately 3:00 a.m., Tan Yu asked Mrs. Leung to go to the Hotel safety deposit box and retrieve a brown paper envelope. Mrs. Leung did this and returned to the living room of Tan Yu's suite. Present in the suite was the Premier, Mrs. Vander Zalm, Mrs. Leung, Mr. Dean Leung and Tan Yu. Mrs. Leung was instructed by Tan Yu to give the envelope to Dean Leung. Dean Leung was then instructed to open the envelope, which contained U.S. $100 bills, and to count that money. Mr. Leung counted out the money, in the presence of the Premier and placed it into U.S. $1,000.00 piles. After Mr. Leung had counted out the money, the Premier confirmed the amount of money was U.S. $20,000.00. The Premier then put the money back into the envelope and shortly thereafter the Premier and Mrs. Vander Zalm left with the money. The reason why this money was given to the Premier will be discussed below.

In mid August, 1990, the Premier made arrangements for Tan Yu and his delegation to meet the Minister of Finance and the Deputy Minister of the Premier, for the purpose of discussing the establishment of a trust company in British Columbia. At the same time, the Premier at the request of Mrs. Leung, arranged for a luncheon at Government House so that Tan Yu and his delegation could meet the Lieutenant Governor.

On August 20, 1990, the Premier had a telephone conversation with Mr. Bill Hopper, the Chairman of the Board of Petro Canada Inc. This conversation concerned the Petro Canada site adjacent to Fantasy Garden World property. On August 20, 1990, either the Premier or Mrs. Vander Zalm contacted Michael Kendler, their lawyer, and instructed Mr. Kendler to offer directly to Mr. Hopper an amount of $1,050,000.00 for the Petro Canada corner property.

On August 26, 1990, Mrs. Vander Zalm wrote to Tan Yu informing him that negotiations on adjacent property, including the Petro Canada property, was proceeding but that they had to act quickly with respect to the Petro Canada property as Petro Canada's price would only be held firm for the next few days. In addition, Mrs. Vander Zalm confirmed to Tan Yu that the Premier had arranged for meetings with members of the government during Tan Yu's visit to complete the transaction on September 6 and 7, 1990. Mrs. Vander Zalm stated that the transaction involving Fantasy Garden World would have to be completed prior to such meeting so that there would be no appearance of a conflict of interest.

On September 4, 1990, Michael Kendler spoke by telephone with the Chairman of Petro Canada, Mr. Hopper. During the course of that telephone conversation, Mr. Kendler offered a price of $1,050,000.00 for the Petro Canada site. Mr. Kendler was informed by Mr. Hopper that such offer should be submitted in writing to Mr.

Thomas Simms, the Executive Vice-President for the Western Region of Petro Canada. Mr. Kendler submitted such an offer on behalf of Fantasy Garden World on September 5, 1990.

On the morning of September 6, 1990, the Premier and Mrs. Vander Zalm, Faye and Dean Leung and the Tan Yu group, took the ferry from Tsawassen to Vancouver Island. This group was driven to the legislative buildings where a meeting had been arranged with the Minister of Finance, Mel Couvelier.

The meeting with Mr. Couvelier on the morning of September 6, 1990, was held in the Premier's office and was attended by the Tan Yu group, Mrs. Leung and Mrs. Vander Zalm. Mrs. Vander Zalm's only connection with the Tan Yu group was the sale of Fantasy Gardens. She never attended any other meetings involving government business. The purpose of such meeting was to discuss the potential establishment of a trust company by Tan Yu in British Columbia.

After the meeting with Mr. Couvelier, the Premier had arranged that the Lieutenant-Governor would host a luncheon for the Tan Yu group. The luncheon was booked on the Premier's instructions on the basis that these were potential investors from Taiwan. The Premier did not disclose to the Lieutenant-Governor or his staff that the Tan Yu group was purchasing Fantasy Garden World. After the lunch with the Lieutenant-Governor on September 6, 1990, the Tan Yu group returned by ferry to the Mainland.

There are 2 ways in which functions can be booked at Government House. The first type of request comes from the public at large who make the request known to the staff of the Lieutenant-Governor. The second is a request from the government and for a number of years, these requests have been channelled through the office of the Provincial Secretary. The one exception to this

procedure is the Premier. Protocol allows for the Premier and his staff to contact the Lieutenant Governor or his staff directly to request that an event be attended by the Lieutenant-Governor or hosted at Government House.

On September 7, 1990, the sale of Fantasy Garden World Inc. was made public, but not the terms of sale. Specifically, Mr. and Mrs. Vander Zalm granted a mortgage to Asiaworld (Canada) Inc. for a total of U.S. $11.5 million. No personal or corporate guarantees were given for the mortgage. Of the U.S. $11.5 million financing provided by the Vander Zalms, $7 million was provided interest free for a period of 5 years. Interest would be payable on this amount for the remainder of the 10 year term of the mortgage. The security for this loan was the land and other assets of the business of Fantasy Gardens, although the outstanding indebtedness of the Vander Zalms to the Canadian Imperial Bank of Commerce remained on title and ranked ahead of the Vander Zalms' loan to Asiaworld (Canada) Inc. The result of the way in which the transaction was structured was that the Vander Zalms retained an interest in the financial well-being of Asiaworld (Canada) Inc. which interest would continue for a period of at least 10 years.

The purchase of the Fantasy Garden assets was to have been completed on September 7, 1990. Late on the evening of September 6, 1990, the solicitors for the purchaser, Asiaworld (Canada) Inc. realized the transaction came within the statutory requirement for approval of the sale by Investment Canada, which to that point in time had not been received.

Realizing that the transaction could not close without Investment Canada approval and that Tan Yu insisted that if the transaction was to close at all, it must, for reasons of superstition, close on a date that contained the number 7, the

parties had to find some way to complete the transaction on September 7, 1990, yet allow for Investment Canada approval.

It was agreed between the parties that the transaction was to close in escrow on September 7; the funds required to close the transaction would be paid into trust and the Vander Zalms would operate the business in trust for the purchaser in the event that Investment Canada approval was received on or before October 17, 1990.

Application was made on September 10, 1990, by Asiaworld (Canada) Inc. to Investment Canada for approval of the transaction. As in all cases, the Federal Government referred the proposed sale to the Government of British Columbia for its input, if any, as to whether the proposed transaction was opposed by the Province.

The Ministry of International Business and Immigration received the application on September 13, 1991. The application was processed in the same way as any other application and the same criteria was applied by the then Assistant Deputy Minister Mr. Allen and his staff.

In fact, using the regular criteria, there was no reason for the Province to oppose the transaction. Mr. Allen was cognizant that the principals of the Vendor were the Premier and Mrs. Vander Zalm. He spoke with David Emerson, the Deputy Minister to the Premier, and received advice that the Province should take no position on this application as this application involved the Premier. In the result, the Ministry of International Business communicated with Investment Canada and indicated that due to the circumstances of the application (the Premier of the Province being

involved), the Province would take no position. This was reinforced by the fact that this is an area of Federal Government responsibility.

That response was given to the Federal Government by the Province and such response was not reviewed with any elected official. The Minister responsible, The Honourable Mr. Veitch, was only notified after the Province communicated its response to Investment Canada. In fact, Investment Canada approval was given and the sale of Fantasy Gardens to Asiaworld (Canada) Inc. formally closed on October 17, 1990.

On September 10, 1990, Mr. Kendler spoke with in-house counsel for Petro Canada, Maureen Bell. Ms. Bell, aware that Asiaworld (Canada) Inc. had purchased Fantasy Gardens, wanted to deal directly with the ultimate purchaser of the property. Mr. Kendler communicated this to Mr. Bourbonais and Mr. Bourbonais submitted an offer directly to Petro Canada at a price of $1,050,000.00. This offer was ultimately accepted by Petro Canada and on November 8, 1990, title was transferred from Petro Canada Inc. to Asiaworld (Canada) Inc.

As of October 2, 1990, the Premier and Mrs. Vander Zalm began receiving lengthy and persistent phone calls and letters from Faye Leung regarding the commission to which she claims she or some other entity is entitled. Up until October 12, 1990, it would appear that the difficulty that she was having with the Premier and Mrs. Vander Zalm and their counsel, Mr. Kendler, was the fact that she felt that she was entitled to a mortgage on the Fantasy Garden property to secure the commission that would be paid over time. The Vander Zalms, not unreasonably, took the position that this was not part of their agreement. On October 17, 1990 (the closing date on the transaction with Asiaworld (Canada)), she became entitled

to the first payment under the agreement with the Vander Zalms in the amount of U.S. $150,000.00. To complicate matters, on October 12, 1990, the Supreme Court of British Columbia issued a "Mareva" injunction, freezing Mrs. Leung's assets pending the outcome of an action by her creditors. Such injunction was sought and achieved by creditors of Mrs. Leung. After that date Mrs. Leung insisted that if any agreement was to be reduced to writing between IAA and the Vander Zalms that it had to include a description that it was IAA Taiwan that was entitled to any such payment. Mr. Kendler, on behalf of Fantasy Garden World, was reluctant to do that as he had no knowledge of any Taiwanese company involved in the relationship between the Vander Zalms and Mrs. Leung.

Into December of 1990, Mrs. Leung was becoming desperate for money as she had exhausted her credit. The frequency and volume of her telephone calls to the Premier increased and there were discussions between Mrs. Leung and the Premier as to ways in which a payment could be made to her that would not be "frozen", notwithstanding the orders of the Court.

In fairness to Mr. Kendler, it must be pointed out that he fulfilled his duty as counsel to the Vander Zalms with the utmost integrity. His consistent advice to the Vander Zalms was that there was no doubt that an amount of U.S. $150,000.00 was owed to someone, either Mrs. Leung or a company with which she was associated, but to whom this payment should be made, was unknown. Therefore, he counselled the Vander Zalms to pay that amount into court and allow those who disputed entitlement to this amount to fight it out amongst themselves. He also counselled Mr. Vander Zalm that he could not attempt to make any payment to Mrs. Leung indirectly, that would have the effect of avoiding the terms of the mareva injunction.

Notwithstanding this advice, in February of 1991, the Premier engaged in conversations with one Gordon Dowding who purported to be an agent on behalf of IAA Taiwan in an effort to get some money into Mrs. Leung's hands. The Premier entertained the suggestion of a loan being made or some other way of Mrs. Leung getting money that might not be detected by Mrs. Leung's creditors so that such payment would not be subject to being "frozen" pursuant to the injunction. The fact that such payments were not made is due entirely to the steadfastness of the advice provided to Mr. and Mrs. Vander Zalm by Mr. Kendler.

This narrative is my attempt to put together, as best I can, the chronology of events, which is complicated to say the least. It is as complete as the process followed would allow.

THE PURPOSE OF THE $20,000 AND THE PETRO CANADA ISSUE

Two issues arose in the course of my review that has caused me very great concern. They are the purpose for which the Premier accepted (U.S.) $20,000, in the most unusual circumstances, and the Premier's involvement with the sale of the Petro Canada land to Tan Yu. As will be seen they may be closely related issues.

I have been provided with two possible explanations as to the purpose that the $20,000 in U.S. cash was paid to the Premier in the early morning hours of August 4, 1990. The Premier says that it was given to him by Tan Yu at that time for "safekeeping". Faye and Dean Leung say that it was given to compensate the Premier for the fact that he was not to receive any interest on the $7,000,000 (U.S.) of vendor financing for the first five of the ten year term and as well as an advance "good faith" payment of commission in return for the Premier's promise to make his best efforts to obtain for Tan Yu, the Petro Canada property and other adjoining properties.

I am not persuaded by either explanation. The Premier's explanation borders on the incredible; if it is true then it will be one of those real life examples of the truth being stranger than fiction; however Faye and Dean Leung's explanation, while somewhat more plausible, is not sufficiently supported by the evidence and is also inconsistent with some of the evidence that does exist. I do not accept either explanation.

I intend to provide a detailed examination of the evidence offered in support of both explanations. This will demonstrate the quandary I had in trying to decide which one to accept or reject. As I have recounted above it was the Premier who requested that this review be done. During the course of this review, I have heard the Premier express confidence that he would be vindicated and exonerated by me. The Premier has also asserted on many occasions that he was not in breach of his own Guidelines. As such it may be

the Premier who should assume the onus of proving that this is the case. If it is the Premier who has the onus then he has not discharged it. But even if I am constrained from concluding, in the absence of cogent and compelling evidence, that the Premier's purpose in accepting the $20,000 is as Faye and Dean Leung have described it, this does not mean that I must accept, by default, the Premier's explantion. The manner in which I discovered the existence of that $20,000 (which I will set out below) made it incumbent on the Premier to persuade me that his explanation was true. As I have said above and will explain in more detail below I am unable to conclude that it is. The public has a right to know why I cannot accept the explanation of the Premier.

Even without knowing the purpose of the $20,000 I have concluded that its very receipt by the Premier in the circumstances in which it was given together with his subsequent conduct caused the Premier to be in breach of his Guidelines. At the very least it created a situation where the Premier had an apparent conflict of interest of the most egregious kind. I will explain my reasons in greater detail below. It will be my recommendation that if the government wants to have answered the question as to the purpose of the $20,000 insofar as it bears further on the application of the Guidelines then a full and public inquiry must be conducted.

The existence of the $20,000 first came to my attention when I examined Faye Leung who told me about it and provided me with a copy of a tape recording which supported her testimony.

> Ms. Leung: ... Do you think I got any gas money out of it? Do you think I got anything out of it? And I was supposed to get 10 per cent out that I.A.A. what I sign over you what Taiwan -- what Tan Yu pay you that 10 per cent for the Petro land and all those other lands. Well, I haven't got a penny. I explained the $20,000 ---

Mr. Vander Zalm: Oh, I didn't get anything either.

Ms. Leung: Well, that $20,000 cash, I even turn it over to you that night. I was supposed to hold it in trust. But I turned it over to you. I went down to the Bayshore's safety deposit box

Mr. Vanderzalm: Oh, that's in trust, no problem there.

Ms. Leung: I turned it over to you, but that was part of the payment of the land for the Petro Canada.

And you said to I.A.A. Taiwan, finance it, cut off the million dollars that they charged over and above the property to give you the extra two million dollars, and you would then send out them, assign the 10 per cent to them, and then they would give me 50 per cent of it and I would share that with Lillian.

The authenticity of that tape recording has subsequently been confirmed by the Premier as has the fact that he was given (U.S.) $20,000 cash by Tan Yu in the early morning hours of August 4, 1990. However what I regard as very damning is the fact that until the tape surfaced the Premier told me nothing about the $20,000 notwithstanding a lengthy examination on March 1, 1991 during which the events of August 3-4, 1990 were explored in great detail right up to the moment that the Premier departed from the hotel at appropriximately 3:30 a.m.

During my first examination of the Premier and Mrs. Vander Zalm not only did they simply omit to refer to the $20,000.00 but, in my view, deliberately withheld that fact from me. Given the course that the first examination took I have no doubt that but for the subsequent disclosure of the tape recording by Faye Leung (which I will discuss in more detail below) the Premier would have not disclosed $20,000.00 was ever given to him by Tan Yu or the circumstances around which it was given.

During the first examination the Premier described the very last event of the evening to be the creation of a document, (the "commission note") which he said was written out by him at Mrs. Leung's request pertaining to an alleged split on the commission payable of any adjoining property. He told me that he wrote this note at approximately 3:30 a.m. that morning and then left and did not see Tan Yu after that document was created. I set out excerpts from the transcripts of that examination in Appendix "5.1"

In his second examination on March 24, 1991 the Premier was asked when in the evening he was given the $20,000 and he said that it was at the very end of the evening just before he and Mrs. Vander Zalm left and well after the above mentioned commission note was created. I set out excerpts from the transcripts of that examination in Appendix 5.2

Mrs. Vander Zalm was equally inconsistent with respect to the events of August 3 - 4th. I set out the transcript of her first examination at Appendix 5.3 and of her second at Appendix 5.4.

There is no question in my mind that a considerable period of time elapsed between the creation of the commission note and the time Tan Yu gave the Premier the $20,000.00. Nor could that event have been anything but the most memorable. Mrs Vander Zalm who like her husband remained silent about the $20,000 during the first examination had no difficulty in her second examination describing the circumstances surrounding the passing of the $20,000.00 and her description in that regard is set out in Appendix 5.5.

While Faye Leung and Dean Leung were of the view that the commission note was created at Fantasy Gardens later that afternoon their description of the circumstances surrounding the passing of

the $20,000 is generally consistent with that given by the Vander Zalms. Dean Leung's account is perhaps the most graphic. I set it out in Appendix 5.6

When asked on his second examination why he did not advise me of the $20,000 during my first examination the Premier said: "that was a private matter that I didn't see related to anything to do with the garden purchase or otherwise. I thought that to be a private matter, his money, his concern." I find that explanation very difficult to accept. The Premier was sworn to tell the truth, the whole truth and nothing but the truth. It might be one thing if the Premier had not been asked a question which provided him with the opportunity to tell me about the $20,000 but that is not the case. The fact is that the Premier told me during the first examination that after the commission note was created he and Mrs. Vander Zalm left the Bayshore. That is simply not true. A significant, time-consuming and unforgettable event occurred. Two hundred, $100 bills were given to him in a brown paper envelope and counted out in twenty, $1000 stacks in his presence at his request and perhaps by him as well. Surely, if there was an innocent explanation for the $20,000 that the Premier would have told me about it, "private matter" or not. Indeed, I might have been more inclined to accept the Premier's "safekeeping" explanation had he been forthright and forthcoming about it at the earliest opportunity. His and Mrs. Vander Zalm's deliberate withholding of that event is a major factor preventing me from accepting their explanation.

The explanation provided by the Premier and Mrs. Vander Zalm for being given the $20,000 simply does not seem plausible. According to the Premier and Mrs. Vander Zalm the money was given to them for "safe-keeping". The Premier's testimony on this point is as follows:

A. Yeah, there was some conversation I guess between Mr. Tan Yu and Mrs. Leung and from my recollection she said she was going to get some money for us to safe keep because he was going back to Taiwan. I don't recall all of that detail. Then she went away, came back and her husband did count the money and I said, well, if you want us to keep this, do I give you a receipt or what kind of a receipt? And I guess he said no, safekeeping, safekeeping or words to that effect, and the money went back into the envelope or whatever it was and I gave it to Lillian. She took it home and put it in a safe or in the safe.

Mrs. Vander Zalm's account was perhaps understandably vague as I doubt that she had very much to do with the events of August 3-4, 1990. She said:

A. After they gave us the money, then -- well, we just said -- I can't remember all the little details around that time and then we left. And about the money, I couldn't figure the money thing. I thought, well, I heard safe keeping or trust, in trust or something, but I didn't -- they were speaking a language that I didn't understand, so I -- I thought, oh well, whatever. It's all right. I'll take care of it for him. So that's what I did. I thought he wanted me to take care of it for him until -- whatever he wanted it for, for buying stuff for what he needed or, you know, so -- and then we went home.

Mr. Tan Yu was a very sophisticated and astute business man. He had by all appearances out-manoeuvred the Premier in the sale of the Gardens by reneging on an agreement that provided the Premier with an "all cash" deal to an agreement that found the Premier getting only $3,000,000 in cash with the rest being financed by the Premier and with the Premier foregoing interest on $7,000,000, during the first five years of the financing. I find it very odd that Tan Yu did not insist on being given a receipt. I also find it odd that the Premier did not insist on giving a receipt particularly when everything else that evening had been reduced to writing and because the Premier said that he wanted the

envelope opened and the cash counted because "I wouldn't want to take an envelope without knowing what's in it". I also find it difficult to understand why Tan Yu would agree to forgo interest on the $20,000.00 or why the Premier would not put it in an interest bearing bank account if it was only for "safe-keeping". Likewise, it is most curious that Tan Yu would entrust his moneys to the Premier when a day earlier he retained a Vancouver law firm to act on his behalf for the purpose of the sale. Amongst the numerous ways in which money might be kept in "safekeeping" his lawyer's trust account seemd a far more sensible one than handing it to some one who 48 hours before he had never met.

Nor was there any apparent reason for Tan Yu needing money in safekeeping in British Columbia prior to the deal closing on September 7, 1990. I was never told where Tan Yu got the money but presumably he brought the money into Canada without any difficulty. There are no restrictions that I am of aware of in terms of leaving Canada with that amount of money or that Tan Yu would not have been able to comply with such restrictions if any existed.

On March 23, 1990, I was provided with a copy of a letter that was written by Tan Yu addressed to Lillian Vander Zalm and dated March 21, 1991 which purported to explain the purpose of the $20,000. I include a copy of that letter in Appendix 5.7 but excerpt the material passage:

> 4. This $20,000.00 was given to you to safe keep for me as I did not want to have it with me while I was leaving Canada, and I wanted to purchase a large jade sculpture, weighing several ton, depicting the map of British Columbia. I offered to purchase the big stone for $10,000.00 and you actually obtained it for me at $8,000.00 I also wanted to have some money available in the event I wanted you to help purchase furniture for the residential suite. For all the items you have purchased for me, I like them very much. Thank you for your trouble.

This letter has all the appearances of a self-serving document. It was apparently written after Tan Yu called the Premier to express his concern about the controversy surrounding the Premier because the comments being made in the press reflected poorly on him as well as the Premier. Neither the Premier nor Mrs. Vander Zalm said that Tan Yu indicated the reason for the $20,000.00 was to purchase jade or furniture at the time the $20,000.00 was given to the Premier. While the Premier and Mrs. Vander Zalm both allude to the purchase of the jade sculpture and furniture as somehow later being related to the $20,000.00 they concede that they were not told on August 4, 1990 that this was the purpose. The transcript of Mrs. Vander Zalm's account on this point is set out in Appendix 5.8 and the Premier's at Appendix 5.9.

I also consider the payment of the $20,000.00 to be most curious given that Tan Yu employed people in British Columbia that were able to make purchases on his behalf with the money and there was no apparent reason for the Premier and Mrs. Vander Zalm to keep the money or alternatively for them to be put to the trouble of making purchases on their behalf.

What is also very puzzling is the fact that the $20,000 was not used to purchase the sculpture itself even though Tan Yu suggests that it was to be used and indeed he seems to imply that it was used for that purpose. The Premier was asked if he could explain the apparent contradiction between Tan Yu's letter of March 21, 1991 and his and Mrs. Vander Zalm's conduct. I set out an excerpt of the examination on that issue.

Q. Now, Premier, you have indicated that the money for the stone did to come out of the $20,000.00. Can you explain why? Can you explain that given this paragraph?

A. I'm sorry, I don't understand the contradiction here.

Q. He said that he gave you the $20,000.00 and that he wanted you to purchase a big stone, which you did for $8,000.00. Is he not suggesting there that the money for the stone was to come from the $20,000.00?
A. I think that's what he's suggesting, yes.

Q. And is there some reason why you did not pay for the stone out of the $20,000.00?

A. I suppose, you know, because it's his money, he should pay it. You know, I don't know if he wants to pay it cash or cheque or how he pays it, I don't know. That's not our business, I suppose. But I agree he says here that he assumes it came out of that.

Q. And you don't --do you know, Premier, when you received the $20,000.00 that you were to purchase the stone from that money? Let me rephrase that. When you received the $20,000.00, did you know that you were to use that money to purchase the stone?

A. When it was received?

Q. Yes.
A. No.

Q. Prior to purchasing the stone, Premier, did you have any reason to believe that the $20,000.00 should be used to actually purchase the stone?
A. Prior to receiving -- no.

Q. Prior to purchasing the stone?
A. Oh.

Q. Prior to purchasing the stone, did you have reason to believe that the $20,000.00 should be used to make the purchase?
A. As far as I'm concerned, the money was just in safekeeping.

In fact contary to the clear impression left me by the Premier it was the Premier and not Mrs. Vander Zalm who actually negotiated the purchase of the jade. A small point perhaps as there would not appear to be any reason to fail to disclose this information. It

does however represent yet another occasion when the Premier was less than forthright with me - a point that has caused me considerable distress.

A further point that I have difficulty understanding relates to the fact that $2,500.00 was in fact removed from the safe and spent by Mrs. Vander Zalm. She claims that it was originally taken out to pay for the cost of packaging and shipping the jade to Taiwan but was not ultimately used for that purpose because Tan Yu had his own people deal with it. However, I can not discern why the $2,500.00 would have been taken out of the safe for the purpose of shipping but the $6,500.00 which was needed to pay for the jade was not. Nor was the Premier able to explain that for me. His transcript on this point is set out in Appendix 5.10.

As noted above, Mrs. Vander Zalm did not in fact use the $2500 to pay for the freight or packaging of the sculpture although she said that she took it out of the safe for that purpose. Mrs. Vander Zalm was not able to account for the $2500 but said that she would deduct that from the $6500 that Tan Yu owed her for the jade. She said that she put it back into Fantasy Gardens World Inc. but I have been provided with no evidence that this in fact occurred. Her testimony on this point is most confusing and unconvincing and is set out in Appendix 5.11

Lorna Bakker, Mrs. Vander Zalm's secretary of 25 years knew nothing of the $20,000.00 nor did she recall ever receiving for deposit the $2,500.00 from Mrs. Vander Zalm. Neither did the Premier's lawyer or accountant know anything of the $20,000.00.

While the Premier attempted to justify the $20,000 as being Tan Yu's money since it was, at least as of Sept. 7, 1990 in the safe in Fantasy Gardens, the fact is that the only two people in

the world who have, to the present day, the combination to the safe are the Premier and Mrs. Vander Zalm. The Premier was asked when he intended to give Tan Yu the balance of the money still in the safe and he said when Tan Yu comes to Vancouver which he anticipates happening in the spring of 1991. Why he did not choose to do so when Tan Yu was in Vancouver in September 6-7 1990 I do not know.

While it may not be appropriate to draw any adverse inference against the Premier for the conduct of Tan Yu that conduct should not go unnoted. I wrote to Tan Yu on February 25, 1991 requesting that he meet with me. I was prepared to travel to Taipei, Taiwan for that purpose. He never responded. I also retained counsel in Taipei to attempt to meet with Tan You in order to address any concerns that he might have. My counsel was able to meet with Tan Yu but Tan Yu said he would not meet with me. The Premier to his credit wrote to Tan Yu in an attempt to persuade Tan Yu to meet with me but he continues, to this day, to refuse to do so.

While I am not prepared to accept the Premier's explanation for the $20,000.00, I have struggled with the reason why it was given to him or why he accepted it. As much as I would prefer to find an explanation that would exonerate the Premier I accept that a more plausible explanation is the one provided by Faye and Dean Leung; that is that it was in part a gesture on Tan Yu's part for having negotiated a large interest free loan from the Premier which meant a loss to him in the vicinity of (U.S.) $ 2.5 million dollars, and/or was a good faith payment, or perhaps down payment, for the Premier's promise to make his best efforts to acquire the adjoining property and specifically the Petro Can property. However plausible that explanation, it is not sufficiently supported by the

evidence and to some extent is inconsistent with the evidence. Given the serious nature of the allegation it would not be safe or fair for me to accept that it is true.

For instance, if the $20,000.00 was paid as a down payment for a commission to the Premier for arranging or facilitating the sale of the Petro Canada property or any other adjoining property then I would have expected to find an agreement to that effect. None to my knowledge exists. Nor is there any apparent reason why Tan Yu or the Premier would have endeavoured to keep it a secret although it is possible that such an agreement would have been a breach of the Real Estate Act. I do not pretend to know the answer to that and do not wish to say anything that would prejudice the ongoing investigation into alleged breaches of that Act.

There are two notes in Faye Leung's hand which indicate that the purchaser agreed to pay a 10% commission on the purchase of properties adjacent or adjoining Fantasy Gardens but these notes are not signed or initialled by Tan Yu or anyone on his behalf. They are also questionable in that they are on the stationery of the Asiaworld Plaza Hotel Taipei rather than the stationery of the Westin Bayshore in Vancouver as are most of the other documents created on the evening of August 3 and morning of August 4, 1990. The notes are also confusing and anything nbut the calibre one would expect of businessmen of Tan Yu and the Premier's stature.

While Faye Leung and Dean Leung have testified under oath that the $20,000.00 was for the above-stated purpose I have not been uninfluenced by the forceful comments of Mr. Justice McColl in his recent judgement where he found Faye Leung guilty of contempt of court. He said:

> "From my own observations of her when she gave evidence I conclude that she was a most devious and manipulative witness. I have concluded that Mrs.

> Leung presented herself as a person of high intelligence and wit who fully comprehended the nature of the proceedings in spite of frequent claims to not understanding legal processes. To my observation Mrs. Leung is a person of considerable intellectual agility to whom the truth is a tool to be used when it clearly advantages her but who does not hesitate to resort to duplicity, deceit, obfuscation, convenient loss of memory and finally mendacity when the facts would disadvantage her. When all else failed she frequently resorted to an emotional breakdown".

I am not saying that these are necessarily my views but I have to be cognizant of them coming from a respected Justice of the Supreme Court of the Province.

I considered it unsafe to accept Mrs. Leung's testimony except where it was corroborated by other evidence. There are some notes in the Premier's hand that do to some extent corroborate Faye Leung's claim on the $20,000.00 issue but they raise as many questions as they provide answers.

The first note has been referred to above as the "commission note". That is in the Premier's hand and is an acknowledgment that there would be a split with I.A.A. of a "purchasing commission paid by ultimate purchaser" respecting the "adjoining property by FGW." I have included that in Appendix 4 and it is identified as Exhibit 29 in the Premier's examination. There is a fundamental dispute as between Faye Leung and the Premier as to when this document was created. The Premier maintains that it was created at the Bayshore Hotel in the early morning hours of August 4 whereas Faye and Dean Leung say it was created at Fantasy Gardens later that day. I suspect that the truth is somewhere in between. Both the Premier and Faye Leung agree that the date of August 4 and the reference to 50/50 was put in afterwards by Faye Leung. I suspect that the

body of the document was created by the Premier at the Bayshore as he says but that the additions were made at the Gardens later in the afternoon when Faye Leung went to deal with some "housekeeping matters" relating to the sale of the Gardens. The Premier has explained that document as a note that he wrote just to figure out what she wanted and then having done so rejected its content out of hand.

I am not prepared to accept that this note actually represents evidence that a commission was to be forthcoming on the sale of any adjoining property or that the Premier and Faye Leung agreed to "split it". The Premier claims that it was a note that Faye Leung dictated to him and he dutifully wrote out only to make understandable the demand and then to discard it. Faye Leung says that these were the Premier's words and denies that she dictated them to the Premier. Dean Leung however agrees with the Premier that it was Faye Leung who was "giving the words to the Premier to write down..." I am very troubled by this discrepancy in the Leung testimony.

There are a number of notes, some more in "draft" form than others, but all in the Premier's hand that corroborate to some extent Faye Leung's claim that Tan Yu considered paying interest on the first five years of the mortgage term should the Premier make his best efforts to complete the sale of the Petro Canada corner lot (and other adjoining properties) by September 7, 1990, but then Tan Yu "changed his mind". These notes will be included in the Appendix "6" to this Report. One is entitled "interim agreement" (Appendix "6.1", p. 1) which is in the Premier's handwriting. After setting out the terms of the deal which ultimately was agreed upon by the Premier and Tan Yu it also contains this provision:

"If able to obtain assignable option on 8 or 18 acres adjoining (price not to exceed $4,000,000 - per) then interest payable for full 10 year term
Best efforts to complete Petro Can Cor. lot by Sept. 7, 1990 (price not to exceed $1.2m)

The Premier's explanation for this document was, like the commission note, something that was Faye Leung's idea that he simply wrote down in order to understand. He also intimated that it might also have been Tan Yu's idea but was steadfast in refusing to accept that it was his proposal. What is curious about this document is that there does not appear to be any benefit that would accrue to the Premier were he to make his best efforts to complete the sale to Tan Yu of the Petro Canada land by Sept. 7, 1990. Yet one has to ask why such a clause was in a document styled as an "interim agreement" in the first place. The Premier recognized that he would make more money under this proposal than what was ultimately agreed upon with Tan Yu but he disagreed that the proposal was his idea or preference. He said that insofar as it required him to obtain an assignable option on adjoining properties (other than the Petro Canada property) that it was too uncertain. He said that he preferred to recapture some of that lost interest by renegotiating the commission agreement with Faye Leung to reduce the commission that he otherwise had to pay Faye Leung and this he did. There does however also exist in the Premier's hand two other documents which appear to be more in the nature of draft notes (Appendix "6.2 and 6.3") and disclose terms which had they been accepted by Tan Yu may have been to the Premier's benefit. I do not know whether these were produced before or after the note described above as an "interim agreement" nor do I know whether the two pages belong together or are unrelated although they appear to be in sequence. One page however has a line drawn through suggesting that it may not have been acceptable to someone or in an earlier draft. But these notes suggest that the Premier could elect to complete

the sale on the Fantasy Gardens property by foregoing interest on the first 5 years of the financing term should the Premier not be able to obtain an assignable option on both the 8 or 18 acres of adjoining land as well as an assignable option on the Petro Canada property by September 7, 1990.

Mrs. Vander Zalm agreed that during the course of the evening the Premier and Tan Yu would write notes and have Faye Leung "run" them between the rooms because Tan Yu refused to negotiate face to face with the Premier. Mrs. Vander Zalm however could neither confirm nor deny whether any of the notes that I have referred to were ever sent to Tan Yu for his consideration.

I conclude that none of these notes provide sufficient independent evidence which corroborates fully Faye Leung's claim that the Premier was to collect a commission for the sale of the adjoining property. Because she also claims to be entitled to one half of any such commission she obviously has a vested interest in promoting the explanation that she has given to me.

The tape recording does to some considerable extent corroborate Faye Leung's claim but it too can be interpreted in a way favourable to the Premier. On the one hand, the Premier does not deny Faye Leung's assertion that she turned the $20,000.00 "over to you but that was part of the payment of the land for the Petro Canada...". But on the other hand, the Premier said that the money was "in trust" which would be a curious way of describing a commission that he has earned but may be an appropriate way of describing money that he was holding in "safekeeping". Yet it may also be a way of describing money, some of which at least, he was holding in trust for Faye Leung like the other commission payable to her on the sale of Fantasy Gardens; or, perhaps the Premier had by that time decided that he wanted no part of the money and was

intending to give it back to Tan Yu. I do not know which is the more plausible explanation.

The Premier's conduct shortly after the August 4, 1990 meeting is some evidence that he received the $20,000 in order to make his best efforts to arrange for the sale to Tan Yu of the Petro Canada property or the other adjoining property. There is clear evidence by August 26, 1990, that Mrs. Vander Zalm "made contact with the neighbours regarding the adjoining properties" and that she had made "good progress." It is also clear that the Premier himself called Mr. William Hopper, the Chairman and Chief Executive Officer of Petro Canada on August 20, 1990, in order to facilitate the sale of this property to Tan Yu. Since the sale of Fantasy Gardens was not contingent on Tan Yu being able to acquire the Petro Can property or any other property then any efforts by the Premier on Tan Yu's behalf might be explained on the ground that the Premier stood to gain in some other way if those acquisitions occurred.

The Premier's counsel says that no ulterior motive should be ascribed to the Premier insofar as he made these advances to acquire adjoining properties as the Premier was simply being helpful and accommodating to Tan Yu and that it was something that the Premier would have done for any prospective purchase of Fantasy Gardens. For reasons I will develop below, I am not satisfied that it would have been appropriate for the Premier to have made these inquiries on behalf of any prospective purchaser but that is not my point here. I might have been prepared to have accepted that this was the Premier's motive had he told me that this is what he did and why he did it. But again the Premier was not prepared to admit to me in our first meeting that he did contact the Chairman and C.E.O. of Petro Canada in August after the meeting with Tan Yu. Accordingly, I do draw an adverse inference against the Premier

because he was not forthcoming with me on that first occasion about this contact with Mr. Hopper.

During the first examination of the Premier he first denied that he had any conversation with Hopper or any other Petro Canada personnel about the sale of the Petro Canada property. See Appendix 5.12.

Later during the first examination the Premier was asked whether he had any conversations with Mr. Hopper about the sale of the Petro Canada land and his answer was that "it might have come up in passing...over a coffee" but that it occurred not in the summer of 1990 but sometime in 1989. He said that Mrs. Vander Zalm "dealt with Petro Canada at some point back in' 89"; that he was unaware of any activity, correspondence or communication between Fantasy Garden and Petro Canada from the time Mrs. Vander Zalm's bid for the property in 1989 until his lawyer Mr. Kendler made an offer in September of 1990, that any such offer was made at the request of Tan Yu or his lawyer. The Premier made it very clear to me on a number of occasions during our first interview that he did not instruct Mr. Kendler to contact anyone at Petro Canada. Even after Kendler made an offer ostensibly on behalf of Fantasy Garden World Inc. in Sept. 1990 he said "I had no knowledge of what was taking place with respect to this property"

After my first meeting with the Premier I interviewed Mr. Hopper. He acknowledged that Mrs. Vander Zalm called him about "two years ago" about the land and some time later, he attended at Fantasy Garden to discuss it with her. He says that Mrs. Vander Zalm called him twice in August of 1990 but he does not think that he called her back. While he did not recall discussing the matter "over coffee" with the Premier, he did recall speaking with the Premier twice about the land, the first time when he was returning

a call from Mrs. Vander Zalm, the time of which was not clear, and later when the Premier "called me". Although Mr. Hopper could not be sure if the call from the Premier was in June or September of 1990, he did recall that it occurred shortly before a call that he received from Mr. Kendler which, I know to have been Sept. 4, 1990.

On my second interview of the Premier, which occurred after my examination of Hopper and whose transcript was available to the Premier, the Premier then acknowledged speaking to Mr. Hopper at least once if not twice although he maintained that he had no recollection of the precise time. He could not deny that it was in late August 1990 but said that if he did talk to him it was more likely to be in June 1990 than August or September 1990. See excerpts of that testimony at Appendix 5.13.

Since my second examination of the Premier I have been advised by Mr. Hopper, through his counsel, that in fact the day that the Premier called him was August 20 ,1990 and I accept this as true as it is also the day that Mr. Kendler has a written record of receiving instructions from either the Premier or Mrs. Vander Zalm to place an offer on the Petro Canada property directly to Mr. Hopper for $1,050,000.00. I have difficulty understanding why the Premier had so much trouble recalling this conversation and when it occurred.

I have little doubt that Tan Yu expected the Premier to wield whatever influence that he had with officials at Petro Canada to ensure that the Petro Canada property be available to Tan Yu. While the sale of Fantasy Gardens was not expressly contingent on the purchase of Petro Canada it is clear that, being situated where it was, it was regarded as an important acquisition for anyone, including Tan Yu, who might choose to purchase Fantasy Gardens. Shortly after the agreement of purchase and sale was executed (June

16, 1990) the Premier received a letter dated July 3, 1990 from Faye Leung requesting that he prepare an option to purchase the Petro Canada property. In a reply letter on July 5, 1990 the Premier said "we will immediately after receipt of deposit begin the process of purchasing the corner property which will be turned over to the purchaser at the cost to us". On July 30, 1990, Faye Leung faxed the Premier a letter asking him to prepare for the purpose of the upcoming meeting with Tan Yu on August 1 to 4 "all details, price, size, proposed development re corner federal site" the lengthy letter ends with a reminder "plsw be sure have ready (1) federal site...";

Mr. Kendler has told me that the reason that Tan Yu wanted the offer on the Petro Canada property to come from Fantasy Garden rather than from him was because he was concerned that he, (Tan Yu) being a very wealthy man, might be charged a higher price for the property than Fantasy Gardens. It was not, according to Kendler, because Tan Yu wanted the Premier to exercise his influence with him. I have no doubt that Mr. Kendler is reporting accurately whatever was reported to him either by the Vander Zalms, Faye Leung or Tan Yu's lawyers but I have a great deal of difficulty accepting that this was the reason Tan Yu wanted the Premier to be involved. As Mr. Kendler said:

> "...but I remember it very clearly because it seemed humorous to me that he (Tan Yu) should presume that people here would know who he was. I had never heard of him".

Furthermore, why wouldn't Tan Yu simply have his lawyer arrange for the sale on behalf of an anonymous buyer?

A more reasonable explanation is that Tan Yu believed that in order to acquire the Petro Canada property on his own he might be required to compete with others for it by way of a public tender.

He may have thought that the Premier would be able to circumvent that process for him. In any event, the Petro Canada property was, in fact, acquired by Tan Yu without participating in the tender process at the price quoted in March 1990 to the Premier by Petro Canada.

My conclusion drawn on the basis of this evidence is that there are suspicious circumstances that suggest that Petro Canada did provide the Premier with a right of first refusal with respect to the subject property. The Premier was certainly motivated to ensure that he had a right of first refusal with respect to the Petro Canada property as it might have been difficult to sell Fantasy Gardens were the Petro Canada property to fall into the hands of some other person who either was not prepared to sell it to the owner of Fantasy Gardens at all or at a reasonable price or a person that might have carried on a business that was not compatible with the operation of Fantasy Gardens. It is worthwhile to point out that in March the Premier was approached by Mr. Michael Horsey the principal of Bayonet Point Holdings Co. who submitted a letter of intent to purchase the Gardens and one condition was that the Fantasy Gardens World Ltd. make its best efforts to acquire title to the Petro Canada property. He said the he wanted Fantasy Gardens to acquire the property rather than he acquiring directly because in addition to the fact that he did not have the money to purchase it at the time, he wanted to ensure that the Petro Canada lot remained in "friendly hands". I am of the view that the Premier recognized the importance of this point and for that reason made efforts in the spring and summer of 1990, if not long before, to ensure that Petro Canada would give him a right of first refusal on the property. And I suspect he accomplished his goal. As a businessman Mr. Vander Zalm could not be faulted in pursuing this objective. Such is not the case as Premier.

I hasten to add that I have no doubt that Petro Canada sold the property to Tan Yu at a price that was commercially sound and in excess of the last appraised value of the property. Nor would I presume to conclude that if Petro Canada did provide this first right of refusal to the Premier that it was necessarily improper. My only point is that if such a right was afforded to the Premier then this is some evidence which supports the allegation of Mrs. Leung as to the purpose of the $20,000.00 being given to the Premier.

I am of the view, which I will develop later in these reasons that even without being afforded any special treatment by Petro Canada, the Premier's dealings with Mr. Hopper did give rise to an actual conflict of interest and as such a breach of the Guidelines.

There is one other factor that I must point out that causes me great concern about the reason for the $20,000.00. Once it became apparent to Mrs. Leung that she might not be able to collect her commission from the Premier because of the existence of the "mareva injunction" she began to assault the Premier with a barrage of letters and telephone calls. These letters and telephone calls were at best annoying and at worst contained threats, veiled or otherwise, of the embarrassing or harmful information that she would disclose if the Premier did not pay her the money she said was due.

"Don't delay - ignore will send sky high problems!!" said one letter in October 2, 1990. In November she wrote "unless you act upon this matter immediately as set out to Mike Kendler, there will be much more problems you will not want to happen." In the taped telephone conversation of December 3, 1990 Faye Leung said "I've just had it, I mean, if you want this to go through the press, that's fine." And in another call she said:

> "I mean honestly, I don't care if you want to pay into court, because then the affidavits will come out, I will produce all the documents that I have before me, and what does it do to Vander Zalm? What does it do to Vander Zalm's future when we're trying to horse trade, when we do other things?"

And in a telephone call on February 3, 1991 she said:

> "You know Bill, if you want to make an issue out of this and the people want to dig into more, there 'll be lots of fun."

Rather than refusing to have anything to do with her and instead of following his lawyer's sound advice as of October 12, 1990, that he could not pay her a cent but could only pay the money into court the Premier made numerous attempts to try to appease her. On December 3, he promised to meet with her late in the evening to "do it without lawyers" and in fact met with her at approximately 10:30 p.m.and drafted an agreement that was designed to meet her concerns; sensibly the Premier asked for his lawyers advice before he agreed to it and as a result that agreement was never finalized. He also met at least twice with her lawyers or agents rather than leaving the matter in the hands of his own lawyer. He told Mr. Gordon Dowding who purports to be an agent of I.A.A. Taiwan that he understood that he "would draft some sort of a message with Kendler as to how this was to be done or how it could best be done so it didn't look like some sort of a back handed way of getting money to Faye". He considered paying her credit card bills and telephone bills which might have amounted to $10,000 out of his own pocket. He even wrote her a glowing letter of reference letter on December 23, 1990 which had to be insincere and in my view most inappropriate given that it was a letter of reference from the Premier of the Province. (It is not without some irony that a woman he now claims is lying to me on the purpose of the $20,000.00 he described as of "good character,

forthright and honest"). His explanation for all of this conduct was that he felt sorry for her particularly as she had been the one responsible for putting together the Fantasy Garden deal. I have a great deal of difficulty accepting this explanation. By this time any affection or sense of obligation that the Premier may have had for Mrs. Leung surely must have dissipated. A more reasonable inference to draw is that the Premier was worried that Faye Leung might make good on her threats and as a result he bent over backwards to accommodate her.

I conclude then that I do not accept either explanation given by the Premier and Mrs. Leung for the $20,000.00.

CONCLUSIONS

There are three paragraphs from the Conflict of Interest Guidelines for Ministers and Parliamentary Secretaries which are particularly germane to the case at hand. They are as follows:

1. Ministers and Parliamentary Secretaries shall ensure that their ability to exercise their duties and responsibilities objectively is not affected, and does not appear to be affected, by either financial interests of their own or members of their immediate family unit.

2. Ministers shall not be involved in day to day activities of a business of a professional nature where such activity is likely to conflict with their public duties.

4. Ministers and Parliamentary Secretaries shall not use information obtained in the performance of official duties, and which is not available to the general public, for personal gain or for gain of any other person.

The principle that members of Government ought not to place themselves in situations of a conflict of interest embraces two concepts, namely real conflicts of interest and apparent conflicts of interest. In the Sinclair Stevens Commission of Inquiry, the Honourable W.D. Parker defined these two sub-concepts as follows:

> "A real conflict of interest denotes a situation in which a Minister of the Crown has knowledge of a private economic interest that is sufficient to influence the exercise of his or her public duties and responsibilities"
>
> "An apparent conflict of interest exists when there is a reasonable apprehension, which reasonably well-informed persons could properly have, that a conflict of interest exists"

The Conflict of Interest Guidelines themselves recognize the importance of Ministers and Parliamentary Secretaries avoiding both actual and apparent conflicts of interest. Guideline 1 for instance requires Ministers to ensure that "their ability to exercise their duties and responsibilities objectively is not affected and does not appear to be affected by either financial

interests of their own or members of their immediate family unit."

The concern about appearance of conflict as an important concept of modern government. As Commissioner Parker said in the Sinclair Stevens Commission of Inquiry, the reasons are obvious:

> Trust and confidence in government can be maintained and enhanced only if the occasions for apparent conflict are kept to a minimum. Public perception is important. Indeed, the perception that government business is being conducted in an impartial and even-handed manner goes a long way to enhancing public confidence in the overall integrity of government.

While the Conflict of Interest Guidelines do not prohibit Ministers from having an ownership in a business so long as the Minister is not involved in day to day activities which are likely to conflict with his or her public duty, the fact of the matter is that the ownership of Fantasy Gardens created a potential as distinct from an actual or apparent conflict of interest for the Premier from day one. Again, I refer to The Honourable Mr. Parker in the Sinclair Stevens Inquiry. He notes, correctly in my view, that a situation of potential conflict should not in itself attract criticism or condemnation. A potential conflict of interest occurs:

> "where the public office holder finds himself or herself in a situation in which the existence of some private economic interest could influence the exercise of his or her public duties or responsibilities . . . provided that he or she has not yet exercised such duty or responsibility."

A potential conflict of interest can thus become a real or apparent conflict of interest unless the public office holder is cognizant of the dangers that lie ahead and takes "all appropriate steps to extricate himself or herself from the predicament".

As majority shareholder in Fantasy Garden World Inc., Mr. Vander Zalm, as soon as he became Premier of this province, had a potential conflict of interest. It is clear that in disposing of Fantasy Gardens, the Premier did not take the necessary precautions to avoid placing himself in a situation of actual or apparent conflict. From the very beginning of the negotiations through to the date of closing, the Premier mixed his public role as chief citizen of this province entrusted with the leadership of the Government of British Columbia with his private business interest.

In my opinion, the Premier was firstly in breach of paragraphs 1 and 2 of the Guidelines by providing the proposed purchasers of Fantasy Gardens World prior to the completion of the sale of the property with special privileges and the "red carpet" treatment which appeared, at least, to be affected by his and his family's financial interests. The particulars of that conduct are as follows:

a) The Premier wrote to the Minister of International Trade on April 5, 1990, asking that Mr. Veitch meet with Mrs. Leung, as she knew numerous people who might be interested in investing in the province. At the time that this letter was written, the Premier had received an indication in writing from

Mrs. Leung that she was representing people who were interested in investing in British Columbia, and specifically, in buying the Premier's property, Fantasy Gardens;

b) The Premier wrote to the Minister of Finance on July 18, 1990, requesting specific information on the incorporation and establishment of a trust company in British Columbia so that he might provide that information to Tan Yu, who was the prospective purchaser of Fantasy Gardens.

c) On the evening of August 1, 1990, the Premier and Mrs. Vander Zalm met with Tan Yu to discuss both the terms of sale of Fantasy Gardens to Tan Yu and the establishment of a trust company in British Columbia and other investments that Tan Yu might be interested in making in the Province of British Columbia.

d) In mid-August, the Premier arranged for the purchaser of Fantasy Gardens to meet with the Minister of Finance and the Premier's Deputy Minister to discuss the potential for the establishment of a trust company in British Columbia.

e) Not only did the Premier arrange for Tan Yu to meet with

the Minister of Finance and the Deputy Minister to the Premier on September 6, 1990, but such meeting took place in the Premier's office with the wife of the Premier in attendance.

f) The Premier used his position to arrange for the Lieutenant-Governor to host a luncheon for Tan Yu at Government House without disclosing to His Honour or His staff that those to be entertained were in fact to be the purchasers of Fantasy Gardens.

In each instance, the person requesting information, providing information, arranging meetings and luncheons is the Premier of the Province. The evidence disclosed that it is not unusual for the Premier to write to a cabinet colleague requesting that the Minister's department take some action. There was no evidence however that these requests had ever been made on behalf of anyone who was purchasing the Premier's property. It is also unprecedented for potential investors to be hosted by the Premier's wife in his office. Furthermore not all potential investors have a personal briefing session with the Minister of Finance and the Deputy Minister to the Premier. Nor is the Lieutenant-Governor asked to host all potential investors in this province at Government House. Taken alone each instance might not lead to any adverse conclusion. Taken together, however, one is driven to question why the Premier took these actions.

The only common bond between this investor (Tan Yu and agent Faye Leung) and the Premier is that at all times the Premier was aware that his property might be acquired by Tan Yu. It is the combination of the Premier's personal financial interests and the use of his office, public officials and facilities, that creates the appearance of conflict.

By providing the "red carpet" treatment to Tan Yu who is also proposing to purchase the Premier's property, the Premier may appear to have been creating in Tan Yu the expectation that the "red carpet" treatment would only continue if Tan Yu purchased the Premier's property. This perception is particularly reasonable given Tan Yu's alleged intention to establish Fantasy Gardens as his base for further investments in British Columbia.

It matters not whether it would be good or otherwise for the Province if Tan Yu invests in British Columbia. As Commissioner Parker stated with which I concur:

> "It is clear that a conflict of interest can exist even where private interests and public duties coincide."

The second major incident that caused the Premier to be in breach of his Guidelines is the acceptance by him of $20,000.00 cash from Tan Yu in the circumstances described in detail above. Irrespective of the purpose for which Tan Yu provided the Premier with that money I have no doubt that reasonably well-informed persons could properly conclude that the Premier's ability to exercise his duties and responsibilities objectively in the future might appear to be compromised given the bizarre circumstances in which the money was given to the Premier and the lack of any reasonable explanation. Therefore, reasonably well-informed

persons could properly conclude that the Premier was thereafter beholden to Mr. Tan Yu. Even if this in not in fact true, there is certainly an appearance that it is.

Finally, I conclude that the Premier is in breach of both paragraphs 1 and 4 of the Guidelines, insofar as his dealings with Mr. William Hopper, the Chief Executive Officer of Petro Canada is concerned. Both the Premier and Mr. Hopper admitted that any dealings that the Premier had with Mr. Hopper was in his capacity as Premier of the Province. If, as I find is most likely, the Premier received information from Petro Canada that the site could be purchased for about $1,000,000.00, without a public tender and that such information was probably not available to the general public, I find that the Premier is in breach of paragraph 4 of the Guideline.

Furthermore, Petro Canada has extensive assets and business interests in British Columbia. When the Premier, the highest ranking elected official in British Columbia telephoned the highest ranking executive of Petro Canada on August 20, 1990, to discuss the sale of a vacant gas station lot adjacent to the Premier's property, I conclude that the Premier had an actual or real conflict of interest in violation of paragraph 1 of the Guidelines. In my view, the Premier must have been aware that as Premier of the Province such a call to Mr. Hopper could or even would affect to

whom Petro Canada would sell the lot. Whether the Premier's call was in fact the reason why the Petro Canada lot was sold to Tan Yu is not determinative of the issue. It is enough that the Premier knew that his status as Premier could assist in facilitating the sale of the Petro Canada lot to the purchaser of Fantasy Gardens. Mr. Hopper admitted that "a premier of a province demands some attention" and that he would be less than credible if he were to deny that the fact that it was the Premier making the contact "helped open the door for [the purchasers]".

One is left asking the question: if the Premier's breach of the Guidelines was so obvious, how could the Premier have allowed this series of events to occur? During the course of my examination of the Premier and others, two points became obvious to me. The first was that the Premier was not prepared to take advice from those respected and highly skilled political advisors whose job it was to steer the Premier clear of political mine fields - conflict of interest being the most obvious. The Premier kept his Principal Secretary Mr. Jerry Lampert completely in the dark insofar as his involvement in the sale of Fantasy Gardens was concerned. Mr. Lampert confirmed that he did not know anything about the connection between Tan Yu, the Premier and Fantasy Garden until Tan Yu and his delegation arrived at the Premier's office on the morning of September 6. When he was able to get the Premier

aside later in the day, he made it clear that the Premier had a very serious political problem. I quote from a portion of his testimony:

> A. My first discussion with the Premier on this incident as it was unfolding was that same afternoon. He came into my office and Emerson -- my recollection is Emerson was there again and he said to me, to us, "What's the media all upset about here?" Again that's not verbatim, but that was the tone and I said, "Premier, there is a real perception problem here," you know. And we didn't talk about the guidelines. I just told him my view, that there was a real problem in having these people in his office before a deal was done publicly.

Perhaps more fundamentally, the Premier's problem stems not just from his inability to draw a line between his private and public life but in his apparently sincere belief that no conflict existed so long as the public wasn't aware of what was going on. He maintained throughout that he did not inform his Finance Minister, the Lieutenant Governor or even his Principal Secretary about the relationship between Tan Yu and Fantasy Gardens because such would not be "proper". When pressed as to why this was the case, he suggested that if they knew the true state of affairs they might have been influenced in how they exercised their public duties. That is, of course, precisely the problem with the Premier mixing his private business with public duties. The problem does not go away because the Premier does not disclose to his Minister of Finance or the Lieutenant Governor that they are meeting or entertaining persons with whom the Premier has personal business dealings.

Further, the Premier stated that charges of conflict arose only when the media became aware and publicized what was going on. With due respect to the Premier, it was what went on that was wrong, not the media's discovering and publicizing of those events. Attached hereto as Appendix 5.13, are excerpts of the Premier's examination, dated March 24, 1991.

In conclusion, I answer the questions posed by my terms of reference as follows:

1. The Premier played the primary and dominant role in the 1990 sale of Fantasy Gardens;
2. By the Premier's participation in the events that led to the sale of Fantasy Gardens and the sale itself, the Premier was in breach of his Conflict of Interest Guidelines.

Dated at the City of Victoria, in the Province of British Columbia, this 2nd day of April, 1991.

The Honourable E.N. Hughes, Q.C.

APPENDICES

APPENDIX 1

1.1 Text of Statement of February 15, 1991

1.2 Press Release dated February 19, 1991

1.3 Conflict of Interest Guidelines for Ministers and Parliamentary Secretaries

1.4 Letter dated March 7, 1991, from John McAlpine, Q.C. to E. N. Huges, Q.C.

1.5 Letter dated March 8, 1991, from E. N. Hughes, Q.C. to John McAlpine, Q.C.

APPENDIX 2

List of Persons Interviewed

APPENDIX 3

List of Exhibits

APPENDIX 4

Commission Note

APPENDIX 5

5.1 Excerpt of Transcript of Examination of Premier Vander Zalm by E.N. Hughes, Q.C., dated March 1, 1991

5.2 Excerpt of Transcript of Examination of Premier Vander Zalm by J.J. Arvay, Q.C., dated March 24, 1991

5.3 Excerpt of Transcript of Examination of Mrs. Vander Zalm by E.N. Hughes, Q.C., dated March 2, 1991

5.4 Excerpt of Transcript of Examination of Mrs. Vander Zalm by J.J. Arvay, Q.C., dated March 24, 1991

5.5 Excerpt of Transcript of Examination of Mrs. Vander Zalm by J.J. Arvay, Q.C., dated March 24, 1991

5.6 Excerpt of Transcript of Examination of Dean Leung by John L. Finlay, dated March 22, 1991

5.7 Excerpt of Transcript of Examination of Mrs. Vander Zalm by J.J. Arvay, Q.C., dated March 24, 1991

5.8 Excerpt of Transcript of Examination of Premier Vander Zalm by J.J. Arvay, Q.C., dated March 24, 1991

5.9 Excerpt of Transcript of Examination of Premier Vander Zalm by J.J. Arvay, Q.C., dated March 24, 1991

5.10 Excerpt of Transcript of Examination of Mrs. Vander Zalm by J.J. Arvay, Q.C., dated March 24, 1991

5.11 Excerpt of Transcript of Examination of Premier Vander Zalm by E.N. Hughes, Q.C., dated March 1, 1991

5.12 Excerpt of Transcript of Examination of Premier Vander Zalm by J.J. Arvay, Q.C., dated March 24, 1991

5.13 Excerpt of Transcript of Examination of Premier Vander Zalm by J.J. Arvay, Q.C., dated March 24, 1991

APPENDIX 6

6.1 Handwritten Notes "Interim Agreement"

6.2 Handwritten Notes - Potential Terms

STATEMENT OF THE HONOURABLE E.N. HUGHES, Q.C.
MADE ON FEBRUARY 15, 1991

I have had a number of inquiries from the media about the Fantasy Garden matter that I became involved with yesterday, and I therefore thought it appropriate to make some brief remarks to you this morning about that involvement.

My entry into this matter initially came as a result of a phone call from the Premier yesterday afternoon. He told me, amongst other things, that he had heard reports that the Leader of the Opposition had indicated that there would be a role for me in this matter vis-a-vis conflict or no conflict in the Fantasy Garden matter. He said that it was his, the Premier's view, that, indeed, he would like me to become involved in the matter and I gathered along the same lines as he had indicated he had understood the position of the Leader of the Opposition to be. He asked me if I would indeed look at the matter of conflict in his words "past, present or future", with respect to the Fantasy Garden matter and to report on it in a public way.

During the course of the afternoon, I gave a qualified acceptance to that request from the Premier; qualified in the sense that I considered it a very delicate area and that I wanted, indeed, to know whether the position of the Leader of the Opposition was as the Premier had indicated to me, and as he understood it to be.

With that, I made contact with the Office of the Leader of the Opposition, ascertained where I would likely be able to see him, indeed, did see the Leader of the Opposition yesterday afternoon and he confirmed for me that he had stated publicly that one of the options, as he saw it, for the Premier amongst others, was to turn this matter over to me for my consideration and adjudication. Subsequently, I read in last night's edition of the Vancouver Sun remarks by the Leader of the Opposition along the lines that he had communicated to me in our very brief conversation. He did say that he would like the opportunity to get back to me this morning and his Office has been in touch with me this morning.

Both the Premier's Office and the Office of the Leader of the Opposition have concurred that this assignment that I have is one that should be done expeditiously. Indeed it will be.

With the commitment from me I have made it clear to the

Premier's Office that I do not expect an election to be called until I have reported out. That expectation on my part has been heard and I believe has been understood.

I am now giving attention to the terms of reference with respect to the question or questions that I will endeavour to answer and I will make a public statement about that early next week.

I can tell you that in no sense is this a challenge or undertaking that excites me. Not at all.

However, given that I have had experience writing a number of reports with respect to conflict matters and the Premier's guidelines pertaining to conflict, and the fact that I have been familiarizing myself over recent weeks in order to adequately fulfil my duties as Acting Commissioner of Conflict of Interest under the new statute, I feel that given those factors plus the manner in which I have been approached to take on this assignment, as a British Columbian I have come to the conclusion that it is my responsibility to respond to this request in a positive way and I have done so.

The whole matter is clearly a sensitive and a delicate one and that being so I do not Plan to make any other extensive statement today. If you have some general questions, I will perhaps endeavour to be, if I can, of some assistance but I do not intend, for the very reason I have just expressed, to go into detail or say very much in addition to what I have told you this morning. When I make a public statement next week about the terms of reference, and the like, you will be advised.

STATEMENT OF THE HONOURABLE E.N. HUGHES, Q.C.
MARCH 19, 1991

With respect to the assignment that I spoke about on Friday morning, the questions I will endeavour to answer are these:

1. What role, if any, did premier Vander Zalm play in the 1990 sale of Fantasy Gardens?

2. If Premier Vander Zalm did play a role in that sale, was he in breach of Conflict of Interest Guidelines put in place by the Premier for adherence by Members of the Executive Council?

It has never been my view that the Members' Conflict of Interest Act, which was proclaimed into law on the 21st of December 1990, clothed me with statutory authority to undertake this assignment. That statute was not the law of British Columbia during any part of the events into which I am to inquire.

On previous occasions while occupying the position of Deputy Attorney General, at the request of either the office of the Premier or the Attorney General, I inquired into and reported on whether in my judgment the Guidelines to which I refer had been breached by members of the Executive Council.

In determining how I ought to proceed with the current assignment I have had a number of conversations over the past 72 hours with the offices of the Premier and the Leader of the Opposition. They are both in agreement as to the questions to be answered and the manner in which I am to carry out this undertaking. It is their request that I proceed in the same manner that I have followed on the previous occasions of which I speak. Given this request, I have agreed to adopt that procedure. That will involve me studying all available and relevant documentation, interviewing all those who have information that could assist me and are prepared to impart that information to me. That will be followed by my preparation of a Report which will, immediately after completion, be made public. In it I will detail the documentation that was at my disposal, those with whom I have met and the substance of what I learned from them. I will then record my answers to the two questions and the reasons for reaching those answers.

I will embark on the assignment immediately. As I proceed I will have to reserve some of my time to meet my statutory obligations under the Members' Conflict of

Interest Act. Nevertheless, I will mae every effort to keep my commitment of completing this assignment in an expeditious manner. I cannot give a firm time commitment other than to say that barring unforseen circumstances I will report publicly on the matter sometime in the month of March. In the meantime, I do not expect to be involved in public interviews or making public comment about this assignment.

While I believe it will quickly become apparent to me as to who I should interview as I move to answer these questions, anyone who has knowledge that may assist me or knows of anyone who has knowledge in that category, can make that information available to my office at 548 Michigan St., telephone, 356-9283.

"E. N. Hughes"

Attachment: Conflict of Interest Guidelines

CONFLICT OF INTEREST GUIDELINES FOR

MINISTERS AND PARLIAMENTARY SECRETARIES

1. Ministers and Parliamentary Secretaries shall ensure that their ability to exercise their duties and responsibilities objectively is not affected, and does not appear to be affected, by either financial interests of their own or members of their immediate family unit.

2. Ministers shall not be involved in day to day activities of a business or a professional nature where such activity is likely to conflict with their public duties.

3. Ministers shall not retain or hold directorships or other offices in any active financial or commercial corporation (other than a Crown corporation).

4. Ministers and Parliamentary Secretaries shall not use information obtained in the performance of official duties, and which is not available to the general public, for personal gain or for the gain of any other person.

5. Ministers and Parliamentary Secretaries shall withdraw from participating in all decisions, whether in Cabinet or any other situation relating to the duties and responsibilities of a Minister or a Parliamentary Secretary, in which either they or members of their immediate family unit have a financial interest, other than interests shared in common with members of the general public and matter relating to benefits of Members of the Legislative Assembly and Cabinet.

6. Ministers and Parliamentary Secretaries shall withdraw from participating in any decision which could place their public duties and responsibilities in conflict with the interests of any person or entity from whom they have accepted an offer of employment.

7(a) A Minister or a Parliamentary Secretary who leaves that office shall not make representations to the government in relation to any specific ongoing transaction or negotiation to which the government is a party and of which the Minister had charge on behalf of the government during his term as Minister

or in which the Parliamentary Secretary was directly involved if the representation would result in the conferring of a benefit not for general application.

7(b) Ministers and Parliamentary Secretaries shall not, and Ministers shall ensure that officials in the departments and agencies for which they are responsible do not, conduct official business with a former Minister, Member of the Legislative Assembly or senior public official (hereinafter referred to as a "former public office holder"), acting on behalf of himself or another person or entity, where the former public office holder has had, with the preceding six-month period, access to information not available to the general public, which could be used for the personal gain of the former public office holder or a person or entity which he represents.

8(a) In these guidelines, members of a Minister's or Parliamentary Secretary's immediate family unit shall not include family members ordinarily residing outside of the Minister's and the Parliamentary Secretary's house.

8(b) Paragraph 7(b) does not apply where:

(i) a former senior public official or a group or company with which the former official is associated has been the successful bidder in a privatization process approved by cabinet; or

(ii) former senior public official is performing duties or services on behalf of the Crown in right of the province under a contract or arrangement approved by Cabinet or granted after public competition on terms common to all parties.

McAlpine & Hordo

Barristers and Solicitors

Box 12146, 1800 - 808 Nelson Street, Vancouver British Columbia V6Z 2H2
Telephone (604) 687-8621 Telecopier (604) 684-4928 Modem (604) 688-9101

JOHN D. McALPINE, Q.C.
PAUL A. HILDEBRAND
PAUL R. BENNETT

R.J. RANDALL HORDO
ROBERT D. DIEBOLT

CAROL J. ROSS
HOWARD A. MICKELSON
C. ALLAN DONOVAN

March 7, 1991

Mr. Ted Hughes
c/o The Law Society Offices
300 - 1148 Hornby Street
Vancouver, B.C.
V6Z 2C4

Dear Mr. Hughes

Re: Conflict of interest hearing

I recognize that your task is to act both as investigator and judge. I raise issues of fairness and natural justice. In so doing I wish to make it clear that I assert rights common to any citizen and no special rights of the Premier. This letter does not reflect his views as the subject of the investigation but rather my views as Counsel. His instructions to me have been to cooperate fully with you.

We are now well into this hearing. Witnesses have been interviewed with a court reporter present. I presume the interviews have been conducted by yourself. One of the salient features of the interviews is that as Counsel I have not been present and I am unable to cross-examine the witness and to challenge the facts or to bring the favourable facts to your attention.

I requested a ruling last Saturday that the transcripts of the witnesses be provided to me in a timely fashion. I asked for a ruling. There has been no ruling and yet, several witnesses have been interviewed.

If the right to Counsel is to be more than illusory, the rules of procedure must be set now and followed. Informally I have told you that there may be a few occasions, if any, in which I will want to exercise my right to cross-examination. I have also expressed my desire to see that this review moves along as quickly as possible and without confrontation. But these rights should be clarified now.

Later you will have to deal with the manner in which I have the opportunity on behalf of the Premier to meet the evidence that might be revealed as the basis for adverse findings and any concerns you have arising from that evidence.

Let me turn to the process by which you should decide these procedural issues. I have no way of knowing what Mr. Finlay's views are. If his views differ then the appropriate way of dealing with it is to have our respective submissions aired. I ask for the opportunity to be heard with a court reporter present.

You will note that I have addressed the larger picture of the rules by which this review should be conducted. Let me turn to the matter of immediate concern.

Two days ago Mr. Finlay directed the court reporter not to provide me with a transcript of the Premier's and Mrs. Vander Zalm's evidence or deliver them, subject to the condition that I not disclose the transcript to the prospective witnesses. I thought that direction wrong. I discussed this with you briefly from the perspective of the procedure that is followed in civil and criminal cases. Let me set out that position more fully.

In criminal cases Counsel is present even though the witnesses are excluded. Counsel has the opportunity to speak to any prospective witness called as to the nature of the evidence given by the preceding witness. In the civil cases the issue is dealt with in the manner indicated for example by Mr. Justice Legg in Haida Helicopters and by Mr. Justice McDonald in Rogers v. Bank of Montreal.

With respect, it is totally inappropriate for your office to deny us a transcript without ruling on this issue. The authorities are clear that while some degree of restriction may be appropriate as to the evidence between two witnesses as between such as Mr. and Mrs. Vander Zalm, a directive you made and I agreed to, there is no precedent for such a restriction as to the disclosure of their evidence to witnesses such as their solicitor or others. Moreover, you will see even in the cases where restrictions are imposed, Counsel are present and are entitled to discuss their notes of the evidence with the other party. I remind you that I have not been present at any of these interviews other than my own clients.

Several procedural matters that I have raised should be dealt with and determined now. I include the right to receive the

transcripts and have the transcripts ordered expeditiously so as to be available and to have the right to the documentation that is referred to. What interviews have already been conducted and when? Was a court reporter present? I want to order the transcripts and have them available now.

The cost of fully cooperating and attempting to handle this matter expeditiously should not be the denial of my client's right to fundamental justice.

Yours truly

McALPINE & HORDO

John D. McAlpine

JDMcA/ds
1824L/HUGHES.LDS

548 Michigan Street
Victoria, B. C.
V8V 1X4
Telephone-356-9283
Fax-356-7074
March 8, 1991

John D. McAlpine, Q.C.
McAlpine & Hordo
1800-108 Nelson Street
Vancouver, British Columbia
V6Z 2H2

Re: Review of Fantasy Garden Sale

Dear Mr. McAlpine:

I write in reply to your letter of March 7, 1991 which was hand delivered to me in Vancouver at about 6:00 P.M. last evening. You have made it clear that the views you have set forth are yours, expressed to me as Counsel to the Premier. I therefore receive them as having been put forth on behalf of your clients. I confirm that the Premier, Mrs. Vander Zalm and you have cooperated fully with me.

There is some background that I believe should be clarified for you. At the time that the Premier asked me to accept this assignment it was apparent that until that day he had not considered requesting such a review and in light of that I suggested he be certain that full thought had been given to proceeding in this manner and that consultation with his advisors take place. In my two telephone conversations with him he was definite that he wanted me to accept the assignment and to proceed.

Over the next two or three days, I made it quite clear to the Deputy Minister in the office of the Premier that my preference was to be appointed Commissioner under the Inquiry Act and to proceed with a public inquiry in the same manner that Stephen Owen had done in the Administration of Justice inquiry in September 1990. I was told that that was not what the Premier wanted but rather what was requested of me was to follow the same procedure that I had done in the past as Deputy Attorney General in inquiring and reporting on alleged breaches of the Premier's Guidelines of conflict of interest by Ministers. I only agreed to undertake a review rather than conduct a public inquiry when I was advised that that was the procedure also preferred by the Office of the Leader of the Opposition.

When the Premier first called me he had told me that the suggestion of a reference to me was one of the options put forward earlier in the day by the Leader of the Opposition. I confirmed that with the Leader of the Opposition and hence my interest in ascertaining the views of his office as to the procedure to be followed. Once I ascertained that the two offices, representing the only two parties with Members in the Legislature, were of the same mind on the matter I abandoned my preference for a public inquiry under the Inquiry Act.

Had the matter gone forward under the Inquiry Act all of the rights that you now ask be afforded would have been in place. You speak of your right to cross examination, to meet evidence that might be revealed as the basis for adverse findings, of access to and use of transcripts and to the documentation referred to in the transcripts.

The clear implication from the last paragraph of your letter is that if the "rights" as you have called them are not accorded there will be a denial by me of your "client's right to fundamental justice". That is not an allegation that I am prepared to live with and I therefore suggest that the matter I agreed to review be aired in a public forum convened under the Inquiry Act with all the powers vested in the Commissioner as that Act affords and that the Commissioner be such person as the Lieutenant Governor in Council should decide upon. I adopt that course because your clients are not the only ones for whom my review and its results have implications. If the rights that you now assert on behalf of your clients are to be formally afforded there are others who would be equally entitled and would, I believe, be given some standing before a formal inquiry. That is a right that I told the office of the Leader of the Opposition that I would be inclined to afford to that office were my preferred procedural route for a public inquiry to be followed. Unquestionably, there would be others who for good reason would seek standing.

I will return in a moment to how I anticipate the events set forth in the preceding paragraph unfolding. Before I do, I wish to comment on what has taken place to date and how I anticipated proceeding under my current mandate. All transcripts would be available to you in a timely way. Three have been received by me to date. Those of Premier and Mrs. Vander Zalm were received Wednesday afternoon this week and the other one this morning. You are correct that counsel advising me indicated to you that the release of the Vander Zalm's transcripts was on the basis that they were for the use of you and your clients and not for discussion of with others, including those yet to be interviewed. My advice from counsel, Messrs Arvay and Finlay, Barristers and Solicitors of this city, was that that condition was a necessary request to make in my search for the truth in the restricted environment in which I operate given the indicated wishes that I proceed in an informal rather that a formal way. I accepted that advice.

To date three other persons have been interviewed in the presence of a court reporter. Transcripts are expected at the beginning of next week. Other people are yet to be interviewed. All transcripts would have been made available to you on the same basis as indicated in the case of the Vander Zalm's transcripts.

On completion of the examination of witnesses I would have been prepared to meet with you and give you an indication of the findings of fact that appeared to be warranted on the basis of what I had been told. I would have given you the opportunity to respond so that the observations of your clients with respect to those proposed findings could be taken into consideration before finalizing my conclusions. I also would have been prepared to entertain any representations you wished to make on whether those findings indicate a violation of the Premier's Guidelines of Conflict of Interest for Ministers of the Executive Council. All this would be done in a relatively tight time frame considering the circumstances as they are.

My present intention is to deliver to the Premier a letter at noon, Monday March 11, 1991, advising of my withdrawl from the review process, expressing my reasons for doing so and recommending the immediate establishment of a public inquiry under the Inquiry Act.

If, with the knowledge that I have imparted to you with respect to the procedure I would have followed had I continued with this review, you wish to dialogue on the issue of keeping that procedure in place rather than me recommending a public inquiry, you could between now and mid-morning, Monday, be in touch with John Finlay (388-6868 - office; 370-2982 - home). Please do not conclude that I recommend that you follow such a course given the very definite views you have expressed. I include this paragraph only so that you understand I have not entirely closed the door on my continuance should an acceptable basis be found to exist that would make that possible.

The bottom line is I consider I have acted appropriately throughout and short of an adjudication by a court of law, I will not live with the suggestion that I have been party to a denial of anyone's right to fundamental justice.

Yours truly

E. N. (Ted) Hughes

APPENDIX 2

HUGHES INQUIRY

PERSONS INTERVIEWED	DATE
PREMIER VANDER ZALM	MARCH 1, 1991
LILLIAN VANDER ZALM	MARCH 2, 1991
DAVID EMERSON Deputy Minister to the Premier	MARCH 5, 1991
LORNA BAKKER Secretary to Mrs. Lillian Vander Zalm	MARCH 7, 1991
MICHAEL KENDLER Counsel to the Premier and Mrs. Vander Zalm	MARCH 7, 1991
DOUGLAS E. ALLEN Assistant Deputy Minister Ministry of International Business	MARCH 8, 1991
JERRY J. LAMPERT Former Political Advisor to the Premier	MARCH 13, 1991
THE HONOURABLE ELWOOD N. VEITCH Then Minister of International Trade	MARCH 14, 1991
THE HONOURABLE MELVILLE COUVELIER Former Minister of Finance	MARCH 14, 1991
THOMAS SIMMS Vice-President of Petro Canada	MARCH 14, 1991
WILBERT HOPPER President and Chief Executive Officer of Petro Canada	MARCH 15, 1991
JAMES M. ROBERTS Chief of Staff, Government House	MARCH 15, 1991
FAYE LEUNG Real Estate Agent	MARCH 16, 1991
ALAN MCLEOD AND BRUCE ANDREWS Representatives from McDonald's Restaurants	MARCH 19, 1991
JOHANNES VEGT Accountant to the Premier	MARCH 19, 1991
IRIS GILCHRIST Secretary to the Premier	MARCH 20, 1991
DEAN LEUNG Husband of Real Estate Agent, Faye Leung	MARCH 22, 1991

PREMIER VANDER ZALM	MARCH 24, 1991
LILLIAN VANDER ZALM	MARCH 24, 1991
LORNA BAKKER Secretary to Mrs. Lillian Vander Zalm	MARCH 26, 1991
DWAYNE MCNEE (1)	MARCH 26, 1991
MICHAEL HORSEY President of Bayonet Point Holdings Ltd.	MARCH 27, 1991

Note: (1) Unsworn as interview by telephone

(2) All sworn testimony and the interview of Mr. McNee was transcribed

(3) Other persons were interviewed by staff but were not subsequently questioned under oath.

APPENDIX 3

HUGHES INQUIRY

EXHIBITS PRODUCED DURING WITNESS INTERVIEWS

I N D E X

* Where the same document was marked as an exhibit on more than one examination, it appears in this index on the examination when it was first marked only.

EXAMINATION OF WILLIAM VANDERZALM MARCH 1, 1991

EXHIBIT NO.	DESCRIPTION
Exhibit 1	Letter from Faye Leung to the Premier and Lillian Vander Zalm dated March 31, 1990.
Exhibit 2	Contract of Purchase and Sale pertaining to Fantasy Garden World, dated June 2, 1990.
Exhibit 3	Letter from Faye Leung to Bill and Lillian, dated June 6, 1990, regarding confirming the purchase agreement for Fantasy Gardens.
Exhibit 4	Handwritten letter from Faye Leung to the VanderZalms, dated July 3, 1990.
Exhibit 5	Letter dated July 5, 1990,on Fantasy Garden World letterhead to Faye and Dean Leung.
Exhibit 6	Letter dated July 6, 1990, from Lillian Vander Zalm to Faye Leung.
Exhibit 7	Letter dated July 7, 1990, from Faye Leung to Bill and Lillian Vander Zalm.
Exhibit 8	Letter dated July 7, 1990, from Lillian Vander Zalm, on Fantasy Garden World letterhead to Faye Leung.
Exhibit 9	Contract of Purchase and Sale faxed on July 7, 1990.
Exhibit 10	Undated notes by Bill Vander Zalm.

Exhibit 11	Letter dated July 8, 1990, written by Bill Vander Zalm to Faye Leung.
Exhibit 12	Contract of Purchase and Sale dated July 8, 1990.
Exhibit 13	Letter faxed on July 7, 1990, from Faye Leung to Mrs. Vander Zalm.
Exhibit 14	Handwritten letter dated July 8, 1990, from Faye Leung to Bill and Lillian.
Exhibit 15	Letter dated July 9, 1990, from Faye Leung to Bill and Lillian Vander Zalm.
Exhibit 16	Letter faxed July 11, 1990, from Faye Leung to Bill and Lillian Vander Zalm.
Exhibit 17	Letter dated July 12, 1990, from Faye Leung to Bill and Lillian Van der Zalm.
Exhibit 18	Letter dated July 13, 1990, from Faye Leung to Bill and Lillian Vander Zalm.
Exhibit 19	Memo dated July 30, 1990, from Faye Leung to Bill and Lillian Vander Zalm.
Exhibit 20	Letter dated July 18, 1990, from Premier Vander Zalm to The Honourable Mel Couvelier, Minister of Finance.
Exhibit 21	Letter dated July 31, 1990, from The Honourable Mel Couvelier to Premier Vander Zalm.
Exhibit 22	Article on Emilia Roxas published in Asiaweek Magazine.
Exhibit 23	Contract of Purchase and Sale dated August 3, 1990.
Exhibit 24	Schedule to Contract of Purchase and Sale.
Exhibit 25	Contract of Purchase and Sale dated August 3, 1990.
Exhibit 26	Notes (on Asiaworld letterhead) dated August 3, 1990.
Exhibit 27	Agreement between Van's Nurseries Inc. and IAA Investments Development Inc. (dated "for reference and deemed effective the 3rd day of August, 1990").
Exhibit 28	Schedule describing the breakdown of the price to be paid for Fantasy Gardens.

Exhibit 29	Unsigned document on letterhead of Westin Bayshore.
Exhibit 30	Letter dated August 4, 1990, from Lillian VanderZalm to Mr. Tan Yu.
Exhibit 31	Letter from Faye Leung to Premier Vander Zalm.
Exhibit 32	Letter dated August 26, 1990, from Lillian Vander Zalm to Mr. Tan Yu.
Exhibit 33	Letter dated August 27, 1990, from Mr. Tan Yu to Premier and Mrs. Vander Zalm.
Exhibit 34	"To Do" list dated September 10, 1990.
Exhibit 35	Formal announcement of sale of Fantasy Garden World dated September 7, 1990.
Exhibit 36	Undated, handwritten note from Premier Vander Zalm to "Michael".
Exhibit 37	Contract of Purchase and Sale dated September 12, 1990.
Exhibit 38	Letter dated September 14, 1990, from Bill VanderZalm to Faye Leung.
Exhibit 39	Note to Michael, written by Bill VanderZalm.
Exhibit 40	Letter dated September 17, 1990, from Michael Kendler to Lillian VanderZalm.
Exhibit 41	Letter dated September 28, 1990, from Michael Kendler to Bill VanderZalm.
Exhibit 42	Letter dated October 2, 1990, from Faye Leung to Bill and Lillian VanderZalm.
Exhibit 43	Letter dated October 5, 1990, from Premier Vander Zalm to Reader.
Exhibit 44	Letter dated October 2, 1990, from The Honourable Mel Couvelier to Dr. David Emerson.
Exhibit 45	Letter of reference dated December 23, 1990, from Bill and Lillian Vander Zalm to "Whom it may Concern", on behalf of Faye Leung.
Exhibit 46	Letter dated November 27, 1990, from IAA Taiwan to Premier and Lillian Vander Zalm.

Exhibit 47 Memo dated July 10, 1990, from Faye Leung to Lillian Vander Zalm.

EXAMINATION OF LILLIAN VANDERZALM MARCH 2, 1991

Exhibit 48 Letter dated May 24, 1989, from A.L. Christie, Petro-Canada, to Fantasy Gardens

Exhibit 49 Letter dated August 24, 1989, from A.L. Christie to Fantasy Gardens.

Exhibit 50 Letter dated October 27, 1989, from Canada Trust to Lillian Vander Zalm.

Exhibit 51 Offer to Purchase, dated January 15, 1990.

Exhibit 52 Handwritten letter dated January 24, 1990, from Eileen Lowe to Lillian Vander Zalm.

Exhibit 53 Letter dated March 14, 1990, from Lynn Hsu to Mr. and Mrs. Vander Zalm

Exhibit 54 Agreement dated June 25, 1990, between Fantasy Garden World In. and B.P.Y.A. 620 Holdings Ltd.

Exhibit 55 Fax from Lillian Vander Zalm to IAA Taiwan c/o Faye Leung.

EXAMINATION OF MICHAEL KENDLER

Exhibit 56 Letter dated March 30, 1990, from Bayonet Point Holdings Ltd. to Lillian VanderZalm.

Exhibit 57 Notes dated April 6, 1990.

Exhibit 58 Notes dated April 7, 1990.

Exhibit 59 Letter dated March 26, 1990, from Bayonet Point Holdings Ltd. to Lillian Vander Zalm.

Exhibit 60 Notes of Michael Kendler.

Exhibit 61 Notes of Michael Kendler dated April 6, 1990.

Exhibit 62 Notes of Michael Kendler dated March 30, 1990.

Exhibit 63	Fax letter dated March 26, 1990, from Bayonet Point Holdings Ltd. to Lillian Vander Zalm
Exhibit 64	Notes of Michael Kendler dated 30/6/90.
Exhibit 65	Letter dated July 3, 1990, from Michael Kendler to Messrs. Boughton Peterson.
Exhibit 66	Notes dated 10/7/90.
Exhibit 67	Memo dated July 9, 1990.
Exhibit 68	Notes dated August 20, 1990.
Exhibit 69	Letter from Michael Kendler to Faye Leung dated August 24, 1990.
Exhibit 70	Notes of Michael Kendler dated August 31, 1990.
Exhibit 71	Notes of Michael Kendler dated September 3, 1990.
Exhibit 72	Notes of Michael Kendler dated 4/9/90.
Exhibit 73	Notes of Michael Kendler dated 5/9/90.
Exhibit 74	Notes of Michael Kendler dated 10/9/90.
Exhibit 75	Notes of Michael Kendler dated 7/9/90.
Exhibit 76	Letter dated September 21, 1990, from Michael Kendler to Marie Fogl at Fantasy Gardens.
Exhibit 77	Notes of Michael Kendler dated 25/9/90.
Exhibit 78	Letter dated September 25, 1990, from Stuart Lang to Michael Kendler.
Exhibit 79	Notes of Michael Kendler dated 3/12/90.

EXAMINATION OF DOUGLAS E. ALLEN

Exhibit 77	Blank booklet entitled Application For Review.
Exhibit 78	Application For Review by Asiaworld (Canada) Inc. dated September 10, 1990.
Exhibit 79	Letter dated September 28, 1990, to Investment Canada.

EXAMINATION OF ELWOOD VEITCH

Exhibit 1	Letter dated April 5, 1990, from the Premier to Elwood Veitch, Minister of International Business and Immigration
Exhibit 2	Letter dated December 12, 1990, to the Editor, Vancouver, Sun, from Faye Leung.

EXAMINATION OF DAVID EMERSON

Exhibit 2	Undated letter from Faye Leung to Premier Vander Zalm.

EXAMINATION OF MEL COUVELIER

Exhibit 2	Letter dated July 31, 1990, from The Honourable Mel Couvelier, Minister of Finance to Premier Vander Zalm.
Exhibit 3	Inter-office Transmission dated September 6, 1990.
Exhibit 4	Letter dated September 14, 1990, to Faye Leung from Premier Vander Zalm.
Exhibit 5	Memorandum dated October 2, 1990, from The Honourable Mel Couvelier to David Emerson, Deputy Minister.
Exhibit 6	Letter dated October 9, 1990, from The Honourable Mel Couvelier to Faye Leung.
Exhibit 8	Letter dated October 5, 1990, from Premier Vander Zalm.
Exhibit 9	Letter February 15, 1991, from The Honourable Mel Couvelier, Minister of Finance, to Ted Hughes, Acting Commissioner of Conflict of Interest.

EXAMINATION OF J. L. LAMPERT

Exhibit 1	Letter dated April 5, 1990, from William Vander Zalm to Elwood Veitch.

Exhibit 8	Letter dated December 23, 1990, from Willian and Lillian Vander Zalm. Appears to be a character reference for Faye Leung.

EXAMINATION OF T.B. SIMMS

Exhibit 1	Executive summary of sale of 12011 Steveston Highway, Richmond, BC.
Exhibit 2	Letter dated May 24, 1989, from A.L. Christie, Manager of Capital Projects Western Region, to Fantasy Gardens.
Exhibit 3	Petro-Canada Property Listing, dated May 24, 1989.
Exhibit 4	Letter dated April 26, 1989, from Bill Mason of McDonald's to Petro Canada regarding the availability for sale of the property at #5 Rd. & Steveston Hwy.
Exhibit 5	A list of properties designated for sale by Petro-Canada in 1989.
Exhibit 6	Letter from A.L. Christie at Petro Canada to Fantasy Gardens, dated August 24, 1989.
Exhibit 7	Surplus property disposal site preparation detail list issued by Petro Canada.
Exhibit 8	Letter dated January 2, 1990, from McDonald's to Petro Canada.
Exhibit 9	Letter dated September 6, 1990, from Michael Kendler to Petro-Canada containing an offer on the Petro-Canada property.
Exhibit 10	Letter dated June 27, 1990, from Robert D. Curell to Petro Canada.
Exhibit 11	Letter dated July 4, 1990, from J. M. Stanford to Robert D. Curell.
Exhibit 12	Letter dated July 13, 1990, from T.B. Simms to Robert D. Curell.
Exhibit 15	Letter from Tom Simms to Robert D. Curell, dated November 21, 1990.

EXAMINATION OF JAMES MICHAEL ROBERTS

Exhibit 1	Government House Guest Seating Plan, September 6, 1990.
Exhibit 2	Government House Guest List for September 6, 1990.

EXAMINATION OF FAYE LEUNG

Exhibit 1	Photograph of Fantasy Garden World taken from an aiplane.
Exhibit 2	Letter dated August 3, 1990, to Faye Leung from Roger M. Bourbonnais (Barrister and Solicitor).
Exhibit 3	Letter dated July 24, 1990, to Mr. and Mrs. and Mrs. Elton See Tan from William Vander Zalm.
Exhibit 4	Notes of Faye Leung made during August 3, and 4, 1990
Exhibit 5	A tape containing 5 telephone conversations between Faye Leung and the Premier.
Exhibit 6	Handwritten note from Bill and Lillian to "Whom it may concern".
Exhibit 7	Note from Bill and Lillian to Faye Leung wishing her a Merry Christmas.
Exhibit 8	Handwritten notes, presumably by Faye Leung.

EXAMINATION OF ALAN W. MCLEOD AND A. BRUCE ANDREWS

Exhibit 1	Letter dated November 26, 1986 from Petro-Canada to Ms. Krogstad.
Exhibit 3	Petro-Canada property listing dated May 24, 1989.
Exhibit 6	Petro-Canada property listing, undated.

EXAMINATION OF JOHN VEGT

Exhibit 1	Memorandum regarding share ownership of Fantasy Garden World dated October 5, 1990.
Exhibit 2	Memo dated October 7, 1988 to Al Kanji from Jim Cosh regarding Fantasy Gardens.
Exhibit 3	Letter dated April 30, 1990, to Lillian Vander Zalm from J. Vegt.
Exhibit 4	Letter dated March 13, 1990, to John Vegt from T.W. Humphries.
Exhibit 5	Letter dated February 22, 1990, to Lillian Vander Zalm from John Vegt.
Exhibit 6	Letter dated March 30, 1990, from Bayonet Point Holdings to Lillian Vander Zalm.
Exhibit 7	Letter from Thorne Ernst & Whinney to Lillian Vander Zalm dated September 19, 1989.
Exhibit 8	Fantasy Garden World - Present value of proceeds dated August 14, 1990.
Exhibit 9	Memo dated June 2, 1988, from Thorne Ernst & Whinney at Mahamud Jinnah regarding Fantasy Gardens.
Exhibit 10	Letter dated September 2, 1986, from Thorne Riddell to Mr. W. Vander Zalm.
Exhibit 11	Letter dated September 5, 1986, from Thorne Riddell to Mr. W. Vander Zalm.
Exhibit 12	Memo dated June 28, 1986, from John Kenyon, Thorne Riddell, to John Vegt.
Exhibit 13	Letter dated October 4, 1990, to Premier William N. Vander Zalm from Peat Marwick Thorne.
Exhibit 15	Fantasy Garden World Inc. Present Value of Cash Inflows Analysis dated October 19, 1990.
Exhibit 16	Letter dated October 5, 1989, to Lillian Vander Zalm from Thorne Ernst & Whinney.

EXAMINATION OF WILLIAM VANDER ZALM MARCH 24, 1991

Exhibit 1(a)	Transcription. "Leung and Vander Zalm Telephone Conversations Extracted From Audio Tape, Exhibit #5.
Exhibit 1(b)	Transcription. "Leung and Vander Zalm Telephone Conversation Extracted From Audio Tape, Exhibit #5 (Conversation four in sequence)
Exhibit 2	Letter dated March 21, 1991, from Mr. Tan Yu to Lillian Vander Zalm.
Exhibit 3	Letter dated August 7, 1990, to the Right Honourable Joe Clark, P.C. M.P., Secretary of State for External Affairs, from the office of the Premier.
Exhibit 4	A tape containing conversations between the Premier and Faye Leung and the Premier and Gordon Dowding.
Exhibit 5	Transcription of telephone Conversations Extracted From Unnumbered Audio Tape.
Exhibit 6	Letter dated January 22, 1990, to the Honourable Elwood Veitch from William N. Vander Zalm.
Exhibit 7	Letter dated March 13, 1991, to Mr. Tan Yu from William N. Vander Zalm.
Exhibit 8	Letter dated March 5, 1991, to David Emerson from Ted Hughes.

EXAMINATION OF IRIS GILCHRIST

Exhibit 1	Letter dated March 19, 1991, to Iris Gilchrist from E. Robert A. Edwards, Deputy Attorney General.

THE WESTIN BAYSHORE
Vancouver

U3

N

8/4/90

No 29 for identification
EXAM. OF [illegible]
HEATHER LINDSAY
Official Reporter

Where there is a
commission to agent
from Vendor and
where there is in its
place or in addition to
a purchasing Commission
paid by ultimate
purchaser to intermediary
such commissions to be
50/50 split by FGW + IAH
but only on ~~adjacent~~ adjacent
adjoining property by FGW.

1601 West George Street, Vancouver, B.C., Canada, V6G 2V4 (604) 682-3377 Telex 04-51442 Fax (604) 687-3102

Appendix 5.1

Excerpt of Transcript of Examination of Premier William N. Vander Zalm by E.N. Hughes, Q.C., dated March 1, 1991:

340 Q. Have you ever seen that document before, Premier?
A. Yes, I have. I remember it very well.

341 Q. Whose handwriting is it?
342 A. That' my handwriting.

342 Q. Can you explain that to us, please, what it is?
A. Yes. This is about 3:30 Saturday morning, August 4, and everybody is dead tire, wanting to get out of there, but she's then telling us about how it is she's to be agent for the adjacent properties, Mrs. Leung, that's fine, and she then continues on about if we were to get a profit or some benefit on the purchase of the adjacent Petro-Can property or other property, then she was to get a split of that and she was rambling on. And, quite frankly, neither Lillian or I could quite understand. We impressed upon her that there were no commissions, there were no profits, it was simply a matter of turning over the property, if we were the purchasers for it, and she went on and on. And finally I said, "Well, tell me what you want." So that's when I, on a piece of Westin Bayshore paper at the table, wrote this out. And even after I wrote it out, I didn't quite understand it, but that's her language. And then I just threw this down on the table and said, "Forget it. This is ridiculous. We are going home. It's late." So we left after that. This piece of paper I had forgotten about until it surfaced again when it was presented in court February 14 along with the other.

347 Q. And you never associated yourself with the content of it?
A. I guess I should have ripped it up, but I just dropped it on the table.

348 Q. But at that point you left?
A. The deal was done. She was still arguing this. The other people had gone to bed.

358 Q. And so you sort of, like you said, tossed it on the table and said you're not going for that and you left?

A. Yes.

359. Q. And that brought, as far as you were concerned, the meeting to a close?

A. That's when we left, yes.

360. Q. Now, this had been the night when negotiations had been going on over the August 3, August 4 period to sort of conclude the deal with Tan Yu present?

361. Q. And you said at one point there were two rooms of you, you were in one room --
A. I only saw him in passing that evening.

362 Q. Oh, is that right?
A. They stayed in their other room.

384 Q. And then this document on the commission split business was sort of a subsequent thing that she had raised at that point?
A. That's right.

385 Q. Was Tan Yu still in the next room?
A. Yes, he was.

386 Q. He hadn't retired yet?
A. That could be. I didn't see him.

Appendix 5.2

Excerpt of Transcript Examination of Premier William N. Vander Zalm, by J.J. Arvay, Q.C., dated March 24, 1991:

605 Q. Did this happen at the very end of the evening after all the negotiations were completed?
A. Probably just before we left. About as we were leaving, I think.
901 Q. In the last examination, Premier, I showed you a document which is Exhibit 29. Actually, Premier, if you will look at that carefully and tell me whether it is possible that that document was created on August 4, in the afternoon of August 4, if I can put it that way, when Mrs. Leung came to the Gardens?
A. No.

902 Q. That's not possible?
A. No.

903 Q. And you evidence --
A. I remember how it was done and when it was done and if I was writing in the quiet -- if I was writing in the quiet of a Saturday afternoon after all of that my writing might have been a little neater that what it here.

904 Q. Your evidence is, at it was last day, that this was created in the wee morning hours of August 4 rather than later on in the day of August 4?
A. It was done in the early morning of August 4 at the hotel.

905 Q. And it was done at the Bayshore Hotel?
A. That is correct.

Mr. McAlpine: Can I see that, please?
Mr. ARvay:

906 Q. And, Premier, do you recall when that document was created in relation to you being given the $20,000.00?
A. Before, I would guess, yes.

907 Q. It was given -- that document was created before you were given the $20,000.00?
A. Before, yes.

908 Q. You are quite sure of that, Premier?
A. The $20,000.00 was entrusted towards the very end, just before we left.

909 Q. What time of the night was this created?

A. This is when we were talking about her various proposals.

910 Q. Was this before Mr. Tan Yu came back?
A. Before Mr. Tan Yu came back.

911 Q. So like before eleven o'clock in the evening of August the 3rd or thereabouts?
A. No, no, before two o'clock or whatever the time he came out of the room.

936 Q. Now, the piece of paper in your handwriting which is Exhibit 20 -- 29 pertaining to the 50/50 split, if I can describe it that was, as I recall your testimony it was that you wrote that out prior to receiving this $20,000.00?
A. yes.

937 Q. And it would have been -- help me with the sequence.
A. Well, Mrs. Leung had some concern that perhaps there was some money coming to us.

938 Q. No, help me with the sequence in relation to -- it happened before the money, before the $20,000.00?

A. Yes.

939 Q. It happened before or after Mr. Tan Yu came out and you shook hands?
A. Mr. Tan Yu didn't know anything about that.

940 Q. Did the writing of that note, Exhibit 29, happen before or after? It must have happened before then?
A. That was before during all our talk when we were scribbling out those various notes.

941 Q. So it happened before Mr. Tan Yu came out and you shook hands?
A. Yes.

942 Q. And you can place at what time of night it would have been, midnight, 1:00 a.m.?

Appendix 5.3

Excerpt of Transcript of Examination of Lillian Vander Zalm by E.N. Hughes, Q.C., dated March 2, 1991:

327 Q. Now, I show you another document which is number 29, Mrs. Vander Zalm. Can you tell me what that is?

A. Oh, this is where she was insisting that Bill write something down about a commission or whatever, but there was never going to be any commission. How could there be any commission with, you know, and he just did this because -- these were her words and he wrote it down, then just threw it on the table not knowing she was going to pick it up, because he didn't sign it and this was very late, like three in the morning or four in the morning, whatever.

331 Q. Were you there when your husband wrote that out?

A. I was on the bed, sitting on the bed and he was at the table. They were small little tables. But he didn't want to write up. She insisted. She said, "You have got to write this." She just kept going on and on, and he didn't sign it because there's no way, you know --

332 Q. Was that pretty much before you broke up at three in the morning or whenever it was?

A. Yes.

349 Q. Just one last question on this document 29 that you have told us about, then I will move on. Did your husband sort of -- did he write this out to sort of --

A. I know he was really tired.

350 Q. He did it to appease Mrs. Leung?

A. I guess just so we could go. She was harping and going on and on, "No, you can't go until you write this letter." But he didn't sign it, because he didn't agree to that.

the Premier were negotiating the deal?

A. Yes.

670 Q. The lunch occurred in an adjoining room?

A. Came in another room.

671 Q. But you had your lunch whatever it was in the morning, the Premier wrote the words that are found on this document, before you went in the other room to eat your lunch, you recall this document being written?

A. It was on a table in that room, as far as I can recall.

672 Q. Did you ever come back into the room after having lunch?

A. I can't remember. I don't think so.

Appendix 5.4

Excerpt of Transcript of Examination of Lillian Vander Zalm by J.J. Arvay, Q.C., dated March 24, 1991:

656 Q. And you are quite sure about the sequence that the snacks, if I can use it that way, coffee, soup and sandwiches, were ordered. That was ordered prior to Mr. Tan Yu coming out of his room and sort of shaking on the deal?

A. I remember that, because he came out with his kimono on. I couldn't figure that one out. Why didn't he keep his suit on? But he had maybe gone to bed. I don't know.

658 Q. So was the snack ordered after he came out to shake on the deal or before?

A. It was before, because I was eating.

659 Q. So you were already eating?

A. I ate mine. I couldn't wait anymore.

660 Q. Then he shows up about how long afterwards? You said sometime later?

A. Yeah, it was quite a bit later. I wasn't watching the time, so I wouldn't know.

661 Q. Can you tell me, Mrs. Vander Zalm, you remember you told us about -- I can get it for you. Mrs. Vander Zalm, you will remember this from last time, the document I'm referring to Exhibit 29 on the Premier's examination, you recall me showing you that last time?

A. Yes, yes, I remember it now.

662 Q. Can you tell me when that was written in relation to the events of August 4?

A. That was just before -- just before we were going to go in the other room to have something to eat at the Bayshore, before we -- that was done over a table at the Bayshore.

667 Q. The lunch was ordered before this piece of paper was written?

A. I don't know. I just said I was hungry. It would have been ordered before or after, I don't know. But the lunch came, it came after they finished the paperwork.

668 Q. The lunch came after --

A. Well, I mean it was sitting in the next time.

669 Q. So this was completed -- so you got two rooms now. This was completed in the room where Mrs. Leung and you and

Appendix 5.5

Excerpt of Transcript Examination of Lillian Vander Zalm by J.J. Arvay, Q.C., dated March 24, 1991:

586 A. Okay. We were -- they had just finished the deal with the papers, with Mike Kendler on the phone and Faye, and I was very hungry and I mentioned that I was very hungry. So they brought some food up, some soup and some fruit I think it was. And then it was in another room. We were in one room. I think it was Faye's bedroom or another suite and then we went into his sitting room. And then I was eating. Nobody was eating and the food was there and I thought, well, I'm going to eat, because I was hungry. I hadn't had dinner. So I started eating and we were waiting.

Mr. Tan Yu was to come and Mr. Lee and they showed up much later. In the meantime, I had finished my food. And then we talked through Faye or through Lee, I don't know which one it was, Faye was always talking and anyway, he finally -- he finally came in. We talked. He wanted me and Bill to come and visit him in Taipei, Thailand or Taipei, and I said I would love to see it and we just talked through Faye and through -- I didn't know whether he was understanding me or not, because -- I still don't know how much English -- I think he understands more than he speaks it, I don't know.

And then I think I gave him a book or Bill gave him a book and he gave us a book, I can't remember what the gift -- I think it was some gifts and -- what happened after that? He was talking: Faye was talking. Then she said, "He likes you." I though, "Oh, that's great." And she said, "He thinks you have kind, honest face." And I said, "Oh, thank you." And they said it again two times after that, in between the -- and then after that he had, I think a cup of tea. I'm not sure. I can't remember exactly.

And after that while they were talking in their language back and forth in between and then -- the Faye left, and I don't know where she went, and she cam back. She said she went to a safety deposit box or something. She came back with an envelope and then I think she gave it to Dean. I don't remember really. And then he started counting the money out of the envelope and then they handed it to Bill and then Bill gave it to me. And then I took it and put it in my -- well, Fantasy Garden -- safe in Fantasy Gardens.

Appendix 5.6

Excerpt of Transcript of Examination of Dean Leung by John L. Finlay, dated March 22, 1991:

84 Q. They finally agreed. Now, did they agree in -- was the Tan Yu group there in the room when the Vander Zalms agreed or were they still in separate rooms?
A. Still in separate -- I think still in separate room. When my wife convey the message to Tan Yu in other room and they come out, they shake hands.

85 Q. They shook hands. Now, did anything happen after that that you can recall that night?
A. Oh, yes --

86 Q. I guess sit would be the early morning of the 4th: right?
A. And then they shake hand, you know, everything okay, you know, good friend, sit down and talk to, sit down and talk to and have some snack, some coffee, because I order quite a bit, too, you know. It got kind of late that time I figure everybody would be hungry, some soup and sandwich and so forth for six people. And they talk, very friendly and so forth. At that time, Mr. Vander Zalm he stand up, he says, Mr. Tan Yu, "If you has some money you don't want to bring back to Orient, can you leave here."

87 Q. Mr. Vander Zalm stood up and he said to Tan Yu, "If you have some money with you that you don't wan to take back to the Orient"--
A. Yes, "you can leave here."

88. Q. "You can leave it here." Okay. And so what happened?
A. So Mr. Tan Yu say Mrs. Leung, "You go down the box, bring the brown envelope up." So my wife then go downstair, go to safety deposit box. I guess so. I never see the safety deposit box. I never see anything.

89 Q. The next thing you know has your wife left the room?
A. Yes.

90 Q. And then does your wife come back into the room?
A. Yes.

91 Q. And what happens when your wife comes back into the room?
A. So my wife bring the brown envelope back and give to Mr. Tan Yu. He say, "No, it's all right, you give Mr. Leung to open it." So my wife give it to me.

92 Q. What did your wife give you?

A. A brown envelope.

93 Q. A brown envelope?
A. Yes.

94 Q. Okay. Now, how large was this brown envelope? Was it as large as the pad of paper that I'm holding up, which is eight and a half by eleven inches long?
A. Not quite, you know.

95. Q. But it's almost as large, was it --
A. Yes.

96. Q. -- as this pad of pad of paper that I'm showing you which is eight and a half by eleven inches long?
A. Around that size, maybe three quarters size.

97. Q. About three quarters of the size of that?
A. Uh-huh.

98. Q. And how thick was it?
A. Was it as thick as the pad of paper that I'm showing you, which is about half an inch thick?
A. No, maybe almost an inch thick?

99. Q. So it would be about three quarters as large as eight and a half by three quarters and about an inch thick; is that right?
A. Yes.

100. Q. Okay. And this brown envelope - and was there any writing or printing on the outside of the envelope?
A. Not my knowledge I know, I don't know.

101 Q. And so Tan Yu says to your wife, "You give it to Mr. Leung." And so your wife gave it to you; is that right?
A. Yes.

102 Q. Gave you the envelope?
A. Yes.

103 Q. And what happened after she gave you the envelope?
A. He asked me to open it. So I opened it.

104 Q. Okay. Now just a sec. How was the envelope sealed? Was it sealed with like a gummed flap or was it sealed with tape?

MS. VAN LOON: One of those little wire prongs.

MR. FINLAY: Or one of those wire --

MS. VAN LOON: prongs

MR. FINLAY:

105 Q. -- prongs?
A. I think it's just seal, just original envelope and it's just sealed.

106 Q. Like a normal envelope that you would just open, would you?
A. Yes.

107. Q. Okay, okay. Once you opened it, what did you do?
A. This is money, that's what I see, a whole bunch of money all in the hundred dollar bill, so I count.

108. Q. And what currency was this in?
A. American.

109. Q. It was American?
A. All hundred dollar bills.

110 Q. They were all $100.00 bills?
A. Uh-huh.

111. Q. So you notice that. What did you do having seen those $100.00 bills in the envelope? What did you do?
A. They all stack up there, so I count it. So I count it, ten in one stack.

112. Q. You made a stack of ten $100.00 bills or a thousand dollars U.S.?
A. Yes, one put this was, second 200 --

MS VAN LOON: The second thousand?

A. The second thousand, third thousand and so forth, because at the table -- I just sit next to some kind of table right in the door.

MR. FINLAY:

113 Q. And you made piles of $1,000.00?
A. Yes

114 Q. In each pile?
A. And then make it double because they don't have room for all the -- spread all over.

115 Q. How many piles were there?
A. Oh, one, one, ten, ten, maybe twenty.

116 Q. There were 20 piles?
A. Yes.

117 Q. So were there $20,000.00 U.S.--
A. Yes.

118. Q. -- in $100.00 bills?
A. Yes.

119. Q. Were these new $100.00 bills or were they old used $100.00 bills?
A. Definite it's not old bill, because it seemed -- I count, it's easy to count, but maybe not so old, too you know. I can't answer that.

120 Q. You can't tell me whether they were --
A. But they seems to be fairly new, fairly new.

121 Q. Was there any sort of elastic band or paper around any of the money?
A. No, it seems to be whole stack is hundred dollar bill, that's all, but even bill I don't think they have banned around it.

122. Q. Now, having counted out this money and you now have 20 piles of $1,000.00 in United States funds in front of you, what did you do with it?
A. I tell Bill, "Bill come over, you count the money."

123 Q. And this is to Mr. Vander Zalm?
A. Mr. Vander Zalm, Mr. Vander Zalm. Mrs. Vander Zalm lie down, take it easy because she's tired.

124 Q. So what did Mr. Vander Zalm do?
A. So he stand in front of me. I give the one stack, he count that and he put that money on the top because they two layer, eh.

125 Q. On the table?
A. Yes.

126 Q. Two levels on the table?
A. So I put on the one side and give another ten and he count and put and so forth, so forth?

127 Q. Mr. --
A. One by one.

128 Q. Mr. --
A. One by one, step by one step.

129 Q. You lost me there. Mr. Vander Zalm came over and what did Mr. Vander Zalm do?
A. I hand the money stack by stack. He count it and give me back, I put back on the table and then I give another, he count it and put it back table.

130 Q. So he counted out the 20 stacks of bills?
A. Uh-huh.

131 Q. And they were back on the table?
A. yes.

132 Q. And what happened after they were put back on the table?
A. I say, "Now $20,000.00, now you count it, you take it."

133 Q. You said to Mr. Vander Zalm, "You take it"?
A. Yes.

134 Q. And what did Mr. Vander Zalm do?
A. He pick up one by one, one by one and put it in the envelope and put in the pocket.

135 Q. Was that in the same envelope that you had received the money in from Mrs. Leung? Did he put it back in that envelope?
A. I think so.

136 Q. And what pocket did he put it in?
A. He put it inside pocket, outside lining, I can't remember. I don't know exactly where -- how he put he put this side or the outside in this pocket.

137 Q. But in any event, Mr. Vander Zalm was wearing a jacket, was he?
A. yes, he was wearing a jacket.

138 Q. And that went into the pocket of his jacket?
A. Yes, that's right.

139 Q. Now, having put it in his pocket, what happened then?
A. So I asked Mr. Tan You, I say, "You need a receipt," because I count the money I paid, I counted some money out and more or less indirectly I still have a little bit of responsibility, so I asked him, Mr. Tan You, "You want a receipt?" He says, "No need." So by the way -- because I have writing pad in the front, eh, so I still write a few words in Chinese, Mr. Tan You give Mr. Vander Zalm $20,000.00 United States dollar and what date. That's all.

140. Q. What happened to that piece of paper?
A. I don't know.

141. Q. Did you give it to Mr. Tan You?
A. No, no, no, because he don't need it.

142 Q. Did you keep it yourself?
A. I put it in my pocket somewhere. Because I figure it's not important, so I don't keep it anymore.

143 Q. So you don't have that piece of paper anymore.
A. Maybe somewhere. I don't know.

Appendix 5.8

Excerpt of Examination of Lillian Vander Zalm by Joseph J. Arvay, Q.C., dated March 24, 1991:

587 A. And then he came back the next time, and then we were walking through the village and he -- of, was it Faye or he -- I said oh, well, I wonder if he would like to buy this map of -- it's all in jade. It's a big map. And she said, "Oh, he'll buy it." Faye said, "He'll buy it." So I showed him the jade and he said, "Oh, that's beautiful." I though he would like it for his -- the area, his office here. And he looked at it, spent much time looking at it. And then I don't know if he said it through me or he said it through her, "How much?" And I said, "The fellow wants 14,000," fourteen five or 14,000. And then he said, "See if you can get it for 10,000." So I went and brought the -- I think it was 65 I paid for it. I have -- my girl has the receipt.

Appendix 5.9

Excerpt of Examination of Premier William N. Vander Zalm by J.J. Arvay, Q.C., dated March 24, 1991:

611 Q. And he didn't say what the money was for other than for safekeeping?

A. Well, it might have been afterwards that he mentioned that he wanted Lillian to help with some furniture and there was a rock at the garden that he wanted to purchase from the owners, but that could have been after.

612 Q. When you say after, after when?

A. After that night at the hotel.

613 Q. On another --

A. Because the impression was definitely safekeeping at the hotel.

614 Q. When you say after, this is an entirely different occasion?

A. I'm thinking this could have been on the Sunday, the Sunday morning.

Appendix 5.10

Excerpt from the Transcript of the Examination of Premier William N. Vander Zalm, by J.J. Arvay, Q.C., dated March 24, 1991:

716 Q. How did it come that approximately $2,500.00 was taken out of the safekeeping for the transportation of the stone?
A. I think the $2,500.00 relates directly to the cost of the crating and shipping and that was taken out. I don't know why it was taken out.

717 Q. Who took it out?
A. I guess Lillian probably took it out. It would have to be.

718 Q. You didn't take it out?
A. No.

719 Q. Did you authorize that it be taken out?
A. No.

720 Q. You didn't instruct Mrs. Vander Zalm to take it out?
A. No. Why would I do that?

721 Q. Well, why would Mrs. Vander Zalm take it out?

A. Well, to purchase or to pay for the expense of the stone or whatever. I don't know.

722 Q. Then why didn't Mrs. Vander Zalm use the balance in the safe to pay for the actual stone rather than use Fantasy Gardens' money?
A. That might have been done, but it hasn't been done, so I don't know.

Appendix 5.11

Excerpt from the Transcript of the Examination of Lillian Vander Zalm by J.J. Arvay, Q.C., dated March 24, 1991:

611 A. When it was time for crating it, I took 2,500, I think it was out of the safe out of his money because he was going to buy it then. And then Brian took it and he bout plywood and whatever he needed for the expenses for the jade. But then they shipped it and they paid for it. So the money, I used part of it, but the rest wasn't used, but then I would have deducted that when he came back to pay me for the jade.

617 Q. So at some point when it came time to pay for the freightage, the freight, you took did you say $2,500.00 --

A. Uh-huh.

618 Q. --from the safe?
A. That was for building the frame around it and for the moving of it and what have you to the back to get it done to prepare for shipping.

619 Q. And did you say it didn't cost all of $2,500.00 to do that or it did?
A. No, it wouldn't have cost that much, because I thought that was going to -- we were going to have to ship it, but they did it. They did it, because then I went on my holidays, so they did the shipping. Well, I don't think they liked the price of our shipping. When my secretary got them the price, then they went to someone else and asked for a price. So I don't know who they got. You will have to ask Mr. Campos.

620 Q. Ask who?
A. The fellow that's right now -- managing it right now.

621 Q. Mr. Campos?
A. He would probably or Jenny, the secretary. They would know who they -- there was a Mr. Wong, too, that was there temporarily.

622 Q. So they ended up --
A. They ended up doing their own arrangements.

623 Q. Making their own arrangements to ship?
A. Yes.

624 Q. But in the meantime you had taken $2,500.00 out of the safe?
A. Yes.

625 Q. And how much of that then was used for the purpose of packaging?

A. I don't know. I left it with Brian and the secretary to do the work on it.

626 Q. Well, where is the $2,500.00 today?
A. It's in the company I guess.

627 Q. Well, what did you do with the $2,500.00?
A. Well, it went into -- well, we have got everyday workings in the -- with the business, so it went into either change or I don't know where it went to.

628. Q. I'm a little bit confused.
A. It either went into -- Lorna put it in or I don't know, I don't know.

629 Q. Why didn't you just write a cheque like you did for the purchase of the statue?
A. I don't really know. It just I thought, well, it's his jade, I'll just take the money. he wants it so -- I didn't think about it actually.

630 Q. Did you, before you took the money out, did your secretary say, "We are going to need $2,500.00 to ship this"?
A. No.

631 Q. Where did you get the figure $2,500.00?
A. I don't know. I just took out $2,500.00. I really don't know. I didn't know what I would need and I figured it would be about $1,500.00 to ship or thereabout and the workings of buying plywood and for the wages and whatever, putting this together.

632 Q. I guess what I'm confused about, Mrs. Vander Zalm, is before you had to pay the money for the packaging and freight, you took the money out of the safe?
A. Uh-huh.

633 Q. And then what did you do with it? Did you carry it, walk around with it or did you --
A. I don't know what I did. I don't know whether I got it taken to the bank or my secretary took it to the bank. I don't know. It went in with my banking. I really don't know what I did with it. I was so busy with everything going on that I really don't know. I can't recall at all what I did with it.

637 Q. So as we sit here you don't know where that $2,500.00 is?
A. Well, it went right into the company for into the company to pay for the packaging and whatever had to be done for

it. She may have just put the American dollars in the bank.

638 Q. Who is she?
A. Lorna did my banking and what have you.

Appendix 5.12

Excerpt from the Transcript of Examination of Premier William N. Vander Zalm by J.J. Arvay, Q.C., dated March 24, 1990:

MR ARVAY:

958 Q. Well, Premier, from the best of your recollection, do you recall yourself speaking to Mr. Hopper twice and on either or both of those occasions discussing with him the Petro-Can property?

A. Yes.

959 Q. And was it on either or both of those occasions?

A. As I recall it, once it was when he was in conversation with Lillian and I picked up or she said do you want to speak -- the Premier just came in, do you want to speak to the Premier, and I recall speaking to him then.

960 Q. And you spoke to him about the Petro-Can property at that time?

A. That's correct.

961 Q. And do you recall what you said to him at that time?

A. Well, I think I just carried on with whatever the conversation Lillian was having about the property and relatively short, exchanged niceties.

962 Q. This would have been after the offer was presented to you by Mrs. Leung in June of 1990?

A. I can't say that. I don't know. I don't recall it that well.

963 Q. The second occasion?

A. The second occasion, as I recall it, I had to look up the date because Mr. Hughes had asked that I do this, was April 12. We had coffee in Victoria and Mr. Hopper said, "I had a call from your wife the other day." or words to that effect. And I said, "Oh, sorry if she's bugging you." And he said, "No problem." or words to that effect. That was the extent of this. So I don't doubt that he couldn't actually recall. But it was very brief.

964 Q. Premier, what Mr. Hopper is saying is that you called him --

A. I don't recall that.

965 Q. -- a few days before he spoke to Mr. Kendler. Mr. Kendler called Mr. Hopper on September 4, 1990.

A. I don't recall what the date that Lillian was talking to him, when I carried on the conversation.

966 Q. Premier, this is the second occasion. Mr. Hopper is

saying that you called him a few days prior to him speaking to Mr. Kendler, which we know was on September 4, 1990. Are you denying that telephone call took place?

A. No, I'm not, but I don't recall calling him. As I recall it, the time that I spoke to him, it was when I walked into the room, Lillian was on the telephone and she said, "Mr. Hopper, the Premier is here. Do you want to talk to him? or something like that. Lillian my have a better memory of that.

967 Q. Premier, are denying that you would have called Mr. Hopper a few days before September 4, 1990 to discuss with him the Petro-Can property?

A. No, I'm not.

968 Q. You are not denying that?

A. I don't recall it.

969 Q. I'm sorry, you are not -- you don't recall it, but you are not denying it?

A. I don't recall making a call to him. That's not to say it couldn't have happened. I just don't know.

970 Q. Do you recall, Premier, asking your secretary, Mrs. Gilchrist, to get you Mr. Hopper's phone number in the latter part of August, 1990, from your office:

A. That could be.

971 Q. You recall that?

A. I don't recall it, but it could well be and I don't know, I might have gotten it for Lillian. I don't know. I don't recall.

972 Q. Premier, why were you speaking to Mr. Hopper in August of 1990 about the Petro-Can property?

A. If it was August or any time before that, if I was talking to him, it would only be because Lillian was already dealing with Petro-Can and had spoken to Mr. Hopper on several occasions I gather.

973 Q. It is fair to say, Mr. Premier, that the reason you were speaking to Mr. Hopper was because you had made some promise, some commitment to Mr. Tan Yu that you would make your best efforts to obtain the Petro-Can property for him?

A. No, I wasn't speaking to him because of any commitment to Mr. Tan Yu. There was no such commitment.

974 Q. Well, Premier, if in fact you spoke to Mr. Hopper in the last few days of August, 1990, which is a few days before the arrival of Mr. Tan Yu, if in fact Mr. Hopper recollection is accurate and you spoke to him at that time and you called him, is not the only reasonable inference to draw --

MR. McALPINE: That's --
MR. ARVAY: Mr. McAlpine.
MR. McALPINE: That's inappropriate, that question, on several counts. It's asking for inferences. It's got several -- too many factors and it's premised on a hypothetical, so just -- I haven't interfered once -- this is the second time, but that is objectionable. So break it down, if you would.
MR. ARVAY:

975 Q. All right, I will. Premier, you are not denying calling Mr. Hopper a few days before September 4, 1990; correct?
A. I'm not confirming nor denying. I don't recall calling him, but that's not to say I might not have.

976 Q. Yes, I'm saying if you did?
A. Yes.

977 Q. And you did at that time, is not the only reasonable inference to draw --

MR. McALPINE: I object to that.
MR. ARVAY: Yes.

MR. McALPINE:

It's up to Mr. Hughes to make reasonable inferences. You suggest what you want to him as to what was going on in his mind. I don't want this witness debating with you about what's reasonable and unreasonable. You can ask about his motivation, whatever.
MR. ARVAY:
978 Q. I'll be frank with you Premier, I guess my difficulty is in you not recalling whether or not you made this telephone call, given Mr. Hopper's testimony and the time that it would have been made, if it was made.

MR. BENNETT:
I believe Mr. Hopper's testimony was he couldn't really recollect whether it was in June or September. If you want to put it --

MR. ARVAY:
979 Q. Mr. Hopper said he didn't recollect whether it was June or September, but he did recollect it was a few days before Mr. Kendler called. We know Mr. Kendler called on September 4, 1990.
A. I can't recall. You know, I get a lot of phone calls and he gets a lot of phone calls, but I can't recall specifically phoning him.

980 Q. Premier, do you recall telling Mr. Kendler approximately August 20, 1990, to make an offer to Petro-Canada for a million fifty thousand?

A. Doesn't seem unreasonable that that might happen, but specifically, no.

981 Q. Why does it not seem unreasonable that that might happen? Where would you got the price of a million fifty thousand?

A. Well, I think Mr. Hopper had indicated that they wanted in excess of a million dollars.

982 Q. And he indicated that to you?

A. He could well have. I think he did. I'm not sure. Again I expect he did.

983 Q. And when you say I expect he did, that would have been on what occasion?

A. When I spoke to him on the telephone?

984 Q. And when you say when I spoke to him on the telephone, do you have a time frame in mind?

A. No.

985 Q. But are you saying, Premier, that you now remember speaking to Mr. Hopper on the telephone about this Petro-Can property?

A. Oh, yes.

986 Q. And during that conversation do you recall telling Mr. Hopper that the property would be sold to the purchasers of Fantasy Gardens?

A. No.

987 Q. Were you telling him that it was you who was going to be the purchaser?

A. We were -- Lillian had been working -- see, I don't recall what the exact timing of this, but we had been working on the purchase of that property since 1989 I guess it was.

988 Q. I appreciate that, Premier, but I'm looking to bring your mind back to the summer of 1990. It's very important. In the summer of 1990 you no longer wanted the Petro-Can property for yourself; correct?

A. That depends on when in the summer.

989 Q. August of 1990, July of 1990?

A. In August of 1990 that would have been correct, I think, yes.

990 Q. It was also correct in July of 1990?

A. In August of 1990 that would have been correct, I think, yes.

991 Q. Fair enough. In July of 1990 or August of 1990, if you were talking to Petro-Canada about purchasing the Petro-

Canada property, it was so that it could ultimately be passed on to any ultimate purchaser of the Fantasy Gardens property?

A. Given the way you are putting it, I would have to think that my conversation with him would have been much earlier than September, but I don't know that.

992 Q. What do you mean given the way I'm putting it? What don't you like about how I'm putting it?

A. Well, I think we were pursuing it more aggressively prior to the sale of the Gardens. It wasn't really so much our issue after the sale of the Gardens.

993 Q. When you say after the sale of the Gardens, what date do you have in mind?

A. August 3rd. So I expect it was before, but I don't know.

994 Q. Well, Premier, if in fact you called Mr. Hopper in the latter part of August, which you don't recall but can't deny, then can you help us as to why you would have done that?

A. I don't think, if I'm allowed to guess, I don't think I phoned at the end of August, if I did phone. And I don't think the conversation that, be it my phoning or Lillian's phoning and me finishing up, was in August or even July. I would have thought it was earlier, if I was guessing. I'm not even sure Lillian spoke to Petro-Can in August. I don't know.

Appendix 5.13

Excerpt from the Transcript of the Examination of Premier William N. Vander Zalm by J.J. Arvay, Q.C., dated March 24, 1991:

With respect to the meeting in the Premier's office:

1098 Q. have you ever -- has there ever been any other situation where Mrs. Vander Zalm has sat in on a meeting involving government business?

A. I wish there was, but, no, I don't believe there is.

1099 Q. And this was a meeting, as far as you were concerned, of government business?

A. That's right.

1100 Q. Is it your view that Mrs. Vander Zalm was properly in that meeting or not?

A. I don't see anything improper about that. We have -- I have meetings with ambassadors, with consuls of various countries and they have other people sitting in as well. There is nothing irregular per se about that happening. But as I understand it, Mrs. Vander Zalm was sitting to the side at another table. She poured the tea. That was the extent of it. So I think that's quite a courteous thing to do.

1101 Q. I'm trying to understand why Mrs. Vander Zalm was there to pour tea. I mean there are other people in the Premier's office who can do that. Why was Mrs. Vander Zalm in that meeting?

A. I don't think she thought there was anything wrong with her being there to the side pouring tea, but I suppose it was because she came in with these folks and she was their host, so I gather that's probably why it was. I have not chided her for it.

1102 Q. Pardon me, sir?

A. I have not chided her for it. I don't think there was anything improper about it.

1103 Q. Is that because she was somewhat of a link between the persons who were purchasing Fantasy Gardens and

the persons who wanted to be introduced to government ministers?

A. No, I just think it shows that we are civil. I think if you are hosting someone and there's tea to be poured, you don't necessarily give it to the minister to pour or to the -- I guess that's -- you will have to ask her, but I think it's civil and it's courteous. I don't see anything wrong with that. I wish it could happen more often. I think it would give a good impression to people.

With respect to the luncheon at Government House:

1117 Q. With respect to Government House, Premier, that was arranged a couple of weeks ahead of time at your request?

A. Yes.

1118 Q. And you did not see fit to tell those who were organizing the luncheon on your behalf that the persons who were to have lunch with the Lieutenant-governor were the prospective purchasers of Fantasy Gardens; is that correct?

A. Well, I won't say it didn't seem fit. I just felt that I should keep the two issues separate....

1120 Q. Sure, Premier, did you make a conscious choice not to disclose to those who were arranging the lunch with the Lieutenant-governor that your guests were the prospective purchasers of the Fantasy Gardens?

A. I felt the issue should be separate.

1121 Q. And, Premier, was that because had that information been disclosed that that would have raised concerns to you in the eyes or minds of the public?

A. It was because I thought in fairness to the people and in fairness to the one at hand that the two issues should be separate.

1122 Q. I'm struggling with this, Premier. Would you agree that if it had been made public that -- I'm going to say it slightly differently. Would you agree that had your staff in the Premier's office or the Lieutenant-governor or his staff, if they had known

that your guests on September 6 were the purchasers of Fantasy Garden, that that would have created some difficulties for them?

A. Well, if not difficulties for them it would certainly not have been fair and I felt the two issues should be kept separate.

1123 Q. I appreciate, Premier, that you have said that you felt the two issues should be kept separate, but I want to know why that was the case. Why did you think it was appropriate not to disclose that information?

A. He was -- well, again I'm repeating myself, but I was trying to keep the garden issue very separate from any other interests they might have had in the province, in fairness to the province, and I work for the province most of the hours during the course of a week, they should have a hearing without anything other having some influence on it.

1124 Q. Again I'm not trying to put words in your mouth, Premier, but I'm trying to understand was it your view that had you disclosed to the Lieutenant Governor either directly or throughout your staff that your guests on that day were the purchasers of Fantasy Gardens that that would have created some difficulty for the Lieutenant-governor?

A. That would be the Lieutenant-governor's decision, but I felt that I should not influence what it is they were trying to do by linking in any way their involvement with the purchase of the Gardens and their other interests.

1126 Q. So if I hear you, you are saying that in fact had that information been known that these people were the purchasers of Fantasy Gardens, that might have created an appearance of some conflict. Are you saying that?

A. Well, in retrospect, when the media became aware, obviously those were the charges. But that's only -- because it was media presented. It certainly wasn't through my activities or my doing. I kept the two separate and I thought in fairness to the people, to the province, to the Lieutenant-governor, to myself, to everyone, the two issues should be kept separate....

1127 Q. Leave the media out.

A. You can't leave the media out. That's why we are here today, is because the media has somehow managed to link the two. It's not anything hopefully that I have done or that we have done or that Asiaworld has done, except perhaps they were a little naive in advising the media of their trip.

With respect to both the meeting and the luncheon:

1145 Q. And, Premier, you know that it's being alleged that that lunch with the Lieutenant-governor, together with the meeting with the ministers, Minister the Finance, was convened at your request in order to impress your purchasers of Fantasy Garden and perhaps to cement the forthcoming deal. it's been alleged.

A. And that gives me comfort.

1146 Q. Why does it give you comfort?

A. it gives me comfort in the sense that I was obviously right in trying to keep the two separate and taking some pains not to tell even as much as my driver, whom perhaps I have more casual conversation with than most, to keep the two entirely separate. My secretary didn't know. Mr. Lampert didn't know. Mr. Emerson didn't know. I work with these people. So it gives me comfort to hear you say what you did. I thought the two should be kept very separate. That's not to say that I shouldn't try and get rid of a house and a business which was obviously creating other problems in other ways. That's something I similarly had to do and decided upon.

THE WESTIN BAYSHORE
Vancouver

8/3/90

Interim agreement

14,500,000.- US

1,000,000.- w/i 7 DAYS

2,000,000.- 9/7/90

4,500,000.-
at PRIME + 1½% (C.I.B.C.)
PAYABLE MONTHLY
AT BANK TERMS.

7,000,000.-

500,000.- YEARLY
NO INTEREST 5 YRS.

5-10 YRS $500.000.-
YRLY + @ 10%
IN FULL 10 YRS.

IF ABLE TO OBTAIN ASSIGNABLE OPTION ON 8 OR 18 ACRES ADJOINING (PRICE NOT TO EXCEED $4.000.000.- PER) THEN INTEREST PAYABLE FOR FULL 10 YR TERM

BEST EFFORT TO COMPLETE PETRO CAN CAR. LOT by SEPT 7, 1990 (PRICE NOT TO EXCEED $1.2M)

1601 West Georgia Street Vancouver BC V6G 2V4 (604) 682-3377 Telex 04-51442

THE WESTIN BAYSHORE
Vancouver

Vendor ~~Mrs 9d 2~~ is prepared to provide advice + guidance for a period of ~~6 or 7~~ months and beyond if mutually agreed upon.

The Vendor on behalf of purchaser to ~~purchase the adjacent~~ obtain an assignable option to purchase the adjacent 8 acres ~~at a price not to exceed $4,000,000 or the~~ or the adjacent 18 acres but price for either not to exceed $4,000,000 on or before Sept 7th.

Vendor also obliged to provide best effort to obtain assignable option to purchase corner Jetro Can property prior to Sept 7th at price not to ~~exceed~~ 1,200,000

1601 West Georgia Street, Vancouver, B.C. V6G 2V4 (604) 682-2287 Telex 04-51242